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STANDING COMMITTEE ON THE OMBUDSMAN
ORGANIZATION

WEDNESDAY, MAY 7, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)
Bossy, M. L. (Chatnam-Kent L)
Hayes, P. (Essex North NDP)
Henderson, D. J. (Humber L)
Hennessy, M. (Fort William PC)
McLean, A. K. (Simcoe East PC)
Morin, G. E., (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Philip, E. T. (Etobicoke NDP)
Sheppard, H. N. (Northumberland PC)
Shynko, Y. R. (High Park-Swansea PC)

Clerk: Decker, T.

Staff:

Bell, J., Counsel; with Bell, Temple
Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, May 7, 1986

The committee met at 10:15 a.m. in room 151.

ORGANIZATION

Clerk of the Committee: Honourable members, it is my duty to call upon you to elect one of your own as chairman of the committee. Are there any nominations?

Mr. McLean: I nominate Ron McNeil.

Mr. Newnan: I second that.

Clerk of the Committee: Mr. McLean has nominated Mr. McNeil. Are there any further nominations?

Mr. Philip: I move nominations be closed.

Clerk of the Committee: If not, I declare nominations closed and Mr. McNeil elected as chairman.

Mr. Chairman: Thank you very much, members, for electing me as your chairman for the coming year.

The next order of business is the election of a vice-chairman.

Mr. Newnan: I nominate Mr. Sheppard.

Mr. Sheppard: You are back, are you, Yuri?

Mr. Chairman: You are entitled to sit on the committee, Yuri. We were wondering whether you were shying away from us.

Mr. Philip: What is the technicality about that? I am not trying to be funny with Yuri, but since he was expelled from the House--

Mr. Chairman: For the rest of the day.

Mr. Philip: Just for the day?

Mr. Chairman: For the duration of the day's sitting.

Interjections.

Mr. McLean: Mr. Chairman, did you put the motion for vice-chairman?

Mr. Chairman: All in favour of Mr. Sheppard as vice-chairman?

Agreed to.

Mr. Chairman: Mr. Morin moves that unless otherwise ordered, a transcript of all committee hearings be made.

Mr. Chairman: All in favour of this motion?

Motion agreed to.

Mr. Chairman: The next item is the 1986-87 budget of the committee. On Monday afternoon, Todd and I appeared before the Board of Internal Economy, and our budget was approved by the board. You might be interested to know that the board also approved rehiring our counsel.

Mr. Bell: That is why I am here.

I think this letter should be distributed to all members of the committee, if it has not been. The chairman, with some assistance from Todd Decker, wrote a letter to the Board of Internal Economy, prior to their attendance on Monday, setting forth a report of our meeting with Mr. Land and setting forth further reasons why this committee believes outside or independent legal counsel is appropriate.

It is a first-rate submission, and it does not apply only to this committee but also to any other committee of which you are now or may become members. It should be preserved by all of you for future reference in the event that you have that same issue before you in another context. I recommend that Todd distribute copies of that letter to each of you for your own purposes.

Mr. Chairman: I understand the next order of business is the establishment of a subcommittee on communications with the public. This is something that has been usual. The terms of reference read:

"Ordered: That a subcommittee be struck to consider on the committee's behalf communications from the public; the subcommittee to be composed of the following members."

We can take nominations for the members of that subcommittee, one member from each party.

Mr. Hayes: I nominate Ed Philip.

Mr. McLean: I nominate Gilles Morin.

Mr. Hennessy: I nominate Yuri Shymko.

Mr. Chairman: That is fine. All in favour of these three members?

To continue: "with a quorum of three; substitution shall be permitted on written notice. All communications from the public to the committee shall be referred to the subcommittee, which will review and respond to them, provided that all decisions by the subcommittee shall be unanimous; any matters which are not decided unanimously by the subcommittee shall be considered by the full committee. The subcommittee shall report to the committee, for consideration by it, any matters which in the subcommittee's opinion warrant the full committee's attention. The subcommittee shall, subject to direction by the committee, determine its procedures."

We do not need a motion to that effect because we have already named the subcommittee.

Clerk of the Committee: We need a chairman.

Mr. Chairman: Do we name the chairman?

Mr. Shymko: I think we should name the chairman.

Mr. Morin: I propose Ed Philip.

Mr. Shymko: I second that.

Mr. Chairman: All in favour of Mr. Philip as the chairman of the subcommittee?

Agreed to.

Mr. Morin: I want to refer you to page 10 of our 13th report where we make a recommendation that the committee "will undertake a review and consideration of the question of the expansion of the jurisdiction of the Ombudsman or an expansion of Ombudsman functions in Ontario. The committee intends to conduct such public hearings where and when it considers appropriate."

I recall vividly that I proposed we ask the Ombudsman himself why he feels we should have an Ombudsman looking at municipal complaints. If there is a person who is well placed to give such an opinion, it certainly is the Ombudsman. I raised that with you, Mr. Bell, and it was to be taken into consideration. Obviously, it was not.

Mr. Bell: There is a little difficulty because some of these discussions were in camera as opposed to public, but the matter you raised was considered. I also recall that the committee felt the recommendation about whether there should be any expansion should be worded in such a way that the committee could act as and how it considered necessary in the circumstances.

You are correct, and I have it noted that the very first thing the committee is going to do, before it does anything else, at the next opportunity, is to say to Dr. Hill: "Dr. Hill, you asked us a year ago to put the question for consideration and discussion, and the committee has agreed with you. Now the first way the committee is going to do this is to ask you."

You can recall last September he held back from making any real submissions on whether he or some Ombudsman should do that. We did discuss this, and as far as I am concerned, in any agenda on this matter the very first thing to do is to have him address this committee with his experience and expertise on why he believes it is necessary. Only after that is done and considered will the committee make any further decisions.

The committee has not said, nor did it intend when this was resolved, that this is going to be done in any scheduled or predetermined way. It is only if it is necessary in the circumstances to provide maximum flexibility.

Mr. Morin: I can think of other bodies that can be of some help, for instance, the Federation of Northern Ontario Municipalities or the Association of Municipalities of Ontario. They publish a bulletin on a monthly basis. They could easily ask that question of their own municipalities that could bring feedback before we entertain any thought of conducting hearings across the province.

Mr. Bell: That is right. Further, you will recall the second order of business that the committee talked about after hearing from the Ombudsman

was to prepare a list of people or interested groups that this committee should hear from, not in a public hearing sense but in some form of communication, before embarking upon any major issue of hearings or otherwise.

It is a walk-before-you-run type of scenario. Do not take it that the comments that were discussed were not covered by this. We did not, by this recommendation or in the text, spell out the steps we were going to take. That is for the next agenda, whenever we decide to meet later this year.

Mr. Shynko: I tend to share some of Mr. Morin's views. It was my understanding that if the Ombudsman officially submitted a request or a recommendation for expansion, we would hold hearings immediately. This recommendation says to the Ombudsman, "Should you officially request an expansion, be warned that this committee will hold hearings." That is my understanding.

It was not my understanding that we were supposed to hold hearings prior to even finding out whether the Ombudsman wants to expand. He alluded to that and indicated it indirectly, but there is no record of him officially recommending to the government or requesting expansion. There is no logic whatsoever for a committee to hold hearings on something no one intends to do, namely, the Ombudsman's request.

Mr. Philip: That certainly was not my understanding of what we agreed. What we said was that the Ombudsman was established in 1975, that the committee was originally set up as a select committee to monitor and initially assist in setting up the Ombudsman, and it was appropriate some 10 or 11 years afterwards for any new office and the functions and role of that office to be reviewed by the committee that was responsible for reporting on that office to the Legislature.

Since the office had been in existence for some 10 years, it seems appropriate for this committee to look at the role of the Ombudsman once again and see whether that role should in any way be changed. That was the rationale. That is quite different from saying to the Ombudsman, "If you want to change your role, then the onus is on you."

We have a responsibility to the taxpayers and to the public, since this office has been in existence for some 10 or 11 years, to review it. We indicated to the Ombudsman and to the public that we were prepared to take on such a review. Of course, a key player in that, a key adviser to us, the first person we would naturally want to meet with, is the Ombudsman. I would take strong exception if, before we decided to have any hearings, we suddenly consulted with one public interest group over another.

10:30 a.m.

The first step is to meet with the Ombudsman and say: "Ten years have passed and we are about ready to review your role. We would like your submissions by a certain date." Then we can give him a couple of months in which to do some preparations. At that point we will say: "Fine, we will go to public hearings. Here are some of the groups we will invite. It will also be open to any other groups that may have some thoughts on that." It seems to me that is the responsible procedure. That is what the committee was doing at that time, if my recollection is correct. Maybe John Bell can comment on that.

Mr. Shynko: Mr. Philip, do I understand that the Ombudsman would have to meet with us and say, "I want to expand and this is my intention," and

having received that indication, we would then obviously hold hearings? Unless we get an indication that he seriously has that intention, there is no point in our publicly announcing hearings on the expansion of the office if he has no intention of doing so.

Mr. Philip: I do not think the hearings should be exclusively on the expansion of the office. This is an important function that was established in 1975 and is now 11 years old. It is our committee's responsibility to monitor and comment on that function, and there are a number of things we would like to look at in its history of 10 or 11 years' existence; maybe by that time it will be 12 years.

Whether or not the Ombudsman wishes to expand his role, it seems reasonable for us to look at the office and how it has functioned and report to the Legislature on any changes of direction the committee might see for the Ombudsman. It is reasonable to look at that. I do not think I want to narrow it down to whether the role of the Ombudsman should be expanded.

The Ombudsman in his initial testimony before the committee on our introduction to starting the review may say: "Yes, there are three areas I would like to see expanded. There are also other directions I want to go in that do not require expansion. There may even be some areas I should be out of that other bodies can take over and deal with better than I can." There have been some initiatives. For example, the new office out of the Ministry of Labour may affect how the Ombudsman deals with workers' compensation.

There may be a whole variety of things that have happened in 10 years, and I do not think we should prejudge such things until we hear from him. Then we can sit down and decide what the inquiry will consist of and what the terms of reference are.

Mr. Morin: If an inquiry is necessary.

Mr. Philip: I think public hearings should be held after any important government office has been set up for a period of 10 or 11 years. The public and various groups should have an opportunity to comment on that. They have not had that opportunity until now, with the exception of our northern trip, when some of the chiefs and some of the northern communities did. While I have a great love for the north, I think southerners have a right to comment on the office as well and how it has functioned.

We may well get a lot of disgruntled people who have not had their cases supported. That is part of politics. There may also be groups such as social planning councils, ratepayers' associations, patients' organizations, trade unions and human rights groups that want to talk about the role of the Ombudsman. Indeed, they may want to talk about the role of this committee and may be critical of the way we are functioning. I think that is legitimate.

Mr. Smyko: Mr. Philip, in our yearly deliberations on the operation of the office, we focus on the need for or the question of expansion, as we have done in this report by a specific reference on page 9 entitled "Expansion of the Ombudsman's Jurisdiction." We have addressed it with a formal recommendation as well. We look at that question every year. To hold public hearings warrants a need for it, and fundamentally that need is the Ombudsman's desire and wish. A recommendation to this committee that he wants to expand would probably unleash a hearing, which we are ready to set up in our recommendation on page 10.

With reference to the human rights people and so on, I think we must dissociate the expansion of the office in terms of what the Ombudsman has perceived in his present mandate from the recommendation of the other expansion, which would include international violations of human rights which, if passed by the Legislature, would automatically provide us with that mandate and would not warrant special or public hearings to ask whether the public--

Mr. Philip: There may be some groups out there that feel we did not go far enough with that. There may be some groups that feel there is another aspect of human rights we should be dealing with. I do not know, and I am not prepared to judge what public opinion is.

Mr. Shymko: I understand but--

Mr. Philip: I think the public has a right, after 11 years of operation, to come forward and share its views with us.

Mr. Shymko: I would like to hear from counsel. Apparently, the expansion of the mandate in that area of the special report is not dependent on public opinion; it is the passage of it--

Mr. Philip: No.

Mr. Shymko: --and obviously we can have comments at any hearings.

Mr. Philip: Some people may say we should not be in that field. That is fine. Let them come and say what they want to say about us.

Mr. Sheppard: The way I understood it was that when Dr. Hill was giving the Ombudsman's 12th annual report, he said he would like this committee to study whether he should have his role as Ombudsman expanded. I thought that we as a committee were to have a look at it and discuss it some day to see whether we felt at that time we should give him the authority to go ahead and expand his role.

I talked to him about it briefly two or three times right after he made those comments. I think it should be discussed in the committee before we decide we are going to do this or that.

Mr. Hennessy: My thinking in the matter is that if he wants to expand--I have to agree with Mr. Philip--we should investigate to see if there is any justification to expand. Expanding just for the sake of expanding does not necessarily mean there may be a lot of people out there who are not satisfied with the approach the office took on certain cases.

I have had people come back to me and tell me the Ombudsman was not worth a pinch of salt, to be frank about it. They were told, "Go and see a lawyer or a member of the Legislature." In some cases where they cannot handle it, there is not much sense in telling the people: "It is no use coming to us. We cannot handle it; it is out of our jurisdiction." If it is out of their jurisdiction, where is it going to go?

We are spending a lot of the taxpayers' money for the Ombudsman. Personally, I am not in love with the Ombudsman's office. I do not think they are doing any more than the members of the Legislature can do. We wind up getting a lot of those cases coming back to us.

If we are going to do it, I would think we would have to look at their

operations and see if there is any justification. When they spend money, they spend a big chunk of money. I would rather see that \$2 million or \$3 million go towards anything, social services, housing or whatever it may be, that would serve more of a purpose than making it so large you will not be able to handle it in the long run. I would like to see what the total work load was and how many cases they solved. Are we paying \$100,000 or \$200,000 to solve each case? What is their batting average? Are they solving more?

My concern is that it is a very costly operation. To say we are going to expand it for the sake of expanding, I think Mr. Philip has a point; we have to hear the pros and cons on whether it is worth while to expand.

10:40 a.m.

Mr. Bell: I think it would be useful if we took a step back and re-examined the chronology of matters that have been presented to the committee and those expected to be presented to the committee later this year.

First, we have been expecting for some time a bill to be tabled in the House amending the Ombudsman Act. You have said repeatedly, and I believe it is with the concurrence of the Attorney General (Mr. Scott), that when that bill is tabled, it will be forwarded to this committee after first reading for clause-by-clause review. This committee has said that at that time it may entertain submissions from persons who may have an interest in any particular amendment. That is a process which you will have to undertake, I hope within the next 12 months.

The next matter is the issue of the expansion of the jurisdiction. In fairness to Dr. Hill and to your report, he has not yet asked or sought to have his jurisdiction expanded or the concept of Ombudsmanship in this province expanded. What he has done is raised the question. It was last raised in 1978. At page 9 of your report, you see what your predecessor committee said about it. While there may be merit in considering the expansion of the concept of Ombudsman in this province, in 1978 your predecessor said it was not to be expanded within that office; it should be some other forum.

You agreed with Dr. Hill when he said it was timely that the question again be raised. That is why you have said what you did say in the report. Bear in mind that at page 10, you have posed the three issues that you think are appropriate for consideration: Is there a need for expansion? If there is such a need, what is the scope? And who should perform the function covered by the expanded jurisdiction? Perhaps if we had to do it again, we would say, "Who should perform that function and why?" But it is implicit.

You have not formulated your plans on how you are going to approach this issue, except you have said that as the first order of business you will be seeking from Dr. Hill, in some formal or written way, his submission on the three issues. I am sure Dr. Hill will be reading this transcript. Again, as a reminder, he should start to have bills of submissions prepared now, because at some time within the next few months, you will be seeking those, and you would like those issues addressed in an extensive way and to put the other real question to him, "Does he want his jurisdiction expanded?" If he does, where, what is the need that has been identified and why? Having received that, that will start you off, because you can then consider his perspective.

Mr. Shymko, you are right. If he comes back and says, "No, I do not think it should be expanded generally, and that means I do not think my office should be expanded," that is going to have some influence on what you decide

to do thereafter. From the content of Dr. Hill's last report, I would be very surprised if that is what he comes back and says. I think that may be a bit of an academic exercise. In any event, it is certainly a possibility.

If he comes back and says something otherwise, as for expansion and for his particular office, then you have to make the decisions implicit in what you have agreed to take on and how to approach it.

I think any other discussion now is a bit premature. I do not think anybody is denying in principle that if you get into it in an appropriate way, there will be a need to receive representations from parties interested in making those representations.

My advice is not to take this discussion any further today but to otherwise instruct Todd or me to communicate with Dr. Hill and his office, alert them to this discussion and make sure they start preparation for what it is you want them to do.

Mr. Philip: I would like to ask John a question. We are going to receive the bill, and the bill can be sent to committee for public hearings. Surely, part of the bill will be whether it is amended or in any way changed to expand the jurisdiction.

I am wondering, in your opinion and with your experience for so many years with the committee, whether it is better to deal with the questions posed on page 10 prior to the bill coming in so we can advise the Attorney General of the thrust we see that he might build into the bill, or whether it is better to wait for the legislation to come down, and since we will have the authority to amend that legislation, to hold fairly extensive hearings that will deal not only with what is in the bill but also with whether that bill should be expanded or amended in any way in terms of jurisdiction and so forth, of which the questions on page 10 would be part of the deliberations.

I wonder whether it is reasonable to hold hearings on the issues on page 10 and then a few months later, depending on the timing of the new bill, to be going around holding public hearings on the bill as well?

I think it is reasonable to say to the Attorney General: "You have the responsibility for bringing in legislation. You know your time frame on this. Would it be of assistance to you if we dealt with this one narrow question, which may be a part of your considerations in your final draft of the bill? Or would you prefer, knowing we are going to deal with this aspect, simply to draft the bill as you see fit with the knowledge that we are going to have fairly extensive hearings of which the questions on page 10 will be part of that consideration and that we may well amend your bill in the light of the input we get on the questions on page 10."

I would like to know where the Attorney General stands on this. If it is helpful for him for us to hold the hearings and then to deal with the bill afterwards, after he has had the input from the hearings, that is fine. If it is not helpful, then the committee might want to decide which course of action it wants to take. I would like to hear from John on that.

Mr. Bell: While I believe it would be desirable to avoid any duplication if necessary--when you are talking about public hearings or consideration of issues, you obviously do not want to hear or talk about them twice--a substantial number of the amendments in question have been sought since 1978, when Arthur Maloney and his staff with the committee then reviewed

in extensive detail the particular issues for amendment. I do not know precisely what the reasons are for the intervening eight years before an amendment has yet to come, but in any event, that is the delay.

Some of those amendments are more than housekeeping; they are fundamental to the Ombudsman's ability to carry on business and are some that he believes will assist him in that area, and he is entitled to know as quickly as possible what amendments he is going to be given. I would think that should be the first goal: to have the bill amending the act tabled, that process completed and the amendments proclaimed. Given a choice, Dr. Hill would choose that route and would be concerned if the so-called expansion issue did anything to delay either the tabling of the bill, its consideration by this committee or ultimately its passing in the House.

10:50 a.m.

It is just a sense I have that there is not the urgency surrounding the expansion issue that there is around the amendments issue. All of you are much more experienced than I am in getting a pulse on the timing of things, but I look at it simply: If it has taken this long to get an amendment, anything that would serve to slow the process after the tabling would almost be a tragedy.

That is a long-winded answer to your question. But I put it as amendments 1 and expansion 2. If you can save some time when you consider 1 to touch upon 2, fine, but do not let that delay that first process.

Mr. Philip: A short-winded summary of what you have said--

Mr. Bell: Is not possible.

Mr. Philip: Let me try. It is important that we get the amendments in as soon as possible. It is preferable to deal with those amendments notwithstanding the fact that we may be holding further hearings and may be telling the Attorney General at some time after those further hearings to further amend the bill in terms of the expansion provisions. That is what you are saying.

Mr. Bell: Yes.

Mr. Philip: My next question is, does Todd or anyone else have any insight as to when the bill will be coming down the tube?

Mr. Bell: I do not believe this. I had occasion the week before last to meet with the Attorney General on a matter, and as the meeting broke up, I asked him--I think my words were, "You owe us a bill." When he understood what I was talking about, he did not give me any specific indication when that bill would be tabled. I did not press it.

My sense, and it is only a sense, is that it is not imminent between now and the end of the session, whenever that is. That is the only latest information I have.

Mr. Shymko: Of the two issues, the amendments to the Ombudsman Act and the expansion, although we do agree that the amendments to the act are a priority and the expansion of a secondary nature, the onus on the decision process as to which will appear on the agenda first is quite different. Although it is a priority to amend the bill, it is up to the Attorney General

to decide when he will forward this. He can wait another eight years. We have waited for eight years; we could wait for another eight years. We do not know. With the other secondary area, the expansion of the office, the onus is on us. We have the power to decide whether to proceed tomorrow if we want to.

As a matter of principle, I think dumping the two together would be very confusing. I think the public out there would like to focus and isolate their attention on the whole question of expansion separate from the amendments to the bill. I would approach it that way so that one does not stall the other. It would be clearer in people's perception and much more efficient in what we are trying to do.

What I am concerned about is the small-p politics of this whole issue of the expansion. I do not mean to say this of the Ombudsman in any derogatory way, but the Ombudsman has gone through some sensitive, negative reactions of the public. The minute the news hit the papers that he wanted to expand the office, there were empire-building allegations and so on. He is very sensitive to this.

Politically, it is much more advantageous and better for the Ombudsman for this committee to ask the public, "How do you want to proceed with expansion?" Then he could react to such recommendations, rather than saying publicly again, "I want expansion," and getting the flak from the public out there again, and then we will proceed. I can understand his position. He would prefer the route of us making a decision and having a public inquiry prior to his making a public statement. I think I understand it; we share. He has gone through a painful period of rather strong criticism of his intention.

Nevertheless, as counsel has said, we can make a simple request to the Ombudsman in the form of a letter, saying, "Dear Sir: Can you indicate to us whether you feel strongly about expansion?" If he says yes, we can start the public hearings. That is all I am saying. We should not start these public hearings unless we have some green light that he has strong feelings about it, which I think he indicated, but I would like to see this in the form of a communication to the committee, which would unleash our public hearings, notwithstanding what the Attorney General will be doing with the amendments.

Mr. Philip: The committee has to deal with two essential questions. The essential questions are these: Is it appropriate to have a review of this office after 10 or 11 years? That is a different question from whether we are going to have a study of one specific aspect; namely, whether or not the role should be expanded. The committee has to decide. There may be separate types of hearings or you may wish to deal with them separately. I feel fairly strongly that there should be a general review of the office after 10 or 11 years.

The issue which the committee has to decide is are we going to do a general review? If we are going to do a general review at this point in time with some public hearings, are the questions on page 10 or the issue of expansion simply going to be a part of that review or is the committee's priority to do an examination of the questions on page 10; namely, the expansion and at some future time, deal with the need for an ongoing review of an office that has been in place for 10 or 11 years. Those are the two questions. If it is not the desire of this committee to deal with what the Ombudsman is doing--how the role functions now we have had 11 years' experience, then we should say that and say we are not going to deal with it. Things are hunky-dory and leave them as they are. If that is the desire of the committee, then I will accept the will of the majority.

Similarly, if it is the desire of the committee to go with the narrower question of expansion, then we will deal with that when we are going to handle it. I do not believe the Ombudsman is ducking the thing. I think he was badly misquoted and misrepresented in the press on this one occasion. He has never said he desired to have it expanded. He said it was now time to look at the role, again for the same reasons that I am arguing, since it has been in existence for 10 years and it is worth while to look at it and see whether it should be expanded.

There are two questions which you should put to the committee, Mr. Chairman. First: Is it our desire to deal with an overall examination of the office, since it has been in existence for 10 or 11 years and since we are now a standing committee and it is obvious that the Ombudsman is here for some time to come? Second: Do we wish to narrow that down to the questions on page 10; namely, the expansion? If we vote for both of those, then it is possible to do them. Then we should consider the question of whether we deal with them together or whether we deal with them separately. If the vote is in favour of dealing with them separately, then it seems to me that we must then decide when to deal with each of them. Those are the questions.

Mr. Morin: I will put it very simply in a few words. At the beginning, I said we should determine the necessity of conducting hearings. Once we have determined that, let us conduct one hearing, as Mr. Philip says. Let us bring in all the other kind of questions we have in mind. Let us not conduct five or 10 hearings. Let us do one, if it is necessary. Let us determine how we should do it, and let us do it. It is as simple as that.

I agree with you that we should not conduct a hearing to determine if the Ombudsman should expand his jurisdiction. We should not conduct another hearing to determine if the Ombudsman's existence is questioned. We can put all those questions together and conduct one hearing, if it is necessary. That is all. That is the issue, is it not?

Mr. Shymko: The more we talk about it, the more confusing it becomes. Did Mr. Philip refer to the general operation of the office?

Mr. Philip: A review of the whole office.

11 a.m.

Mr. Shymko: First of all, we do not have any recommendation or report about a general review of the office. We have a specific recommendation about the expansion of the jurisdiction. It is natural that in discussing the expansion of the jurisdiction of that institution, an overall general review will come out. You will be reviewing the entire office. When you talk about expanding an institution, you review it. That is part and parcel of it. That will come out of those public hearings. You may even have statements from the public to ban the office and to close it, for all we know. We should proceed with the recommendation which is before us. We are ready to do this. All we need is some kind of indication or green light from the Ombudsman, minimal as it may be, to proceed with this. It is in our power to do so.

Mr. Hayes: We are not going to decide right here and now whether we should expand the office, but I have certainly seen areas where it appears that maybe the need is there, and one area is where the federal government has failed to appoint an Ombudsman to take care of some of the matters under their jurisdiction.

Also, Mr. Hennessy was commenting about some of his complaints. I know many of the complaints are against a municipality, for example, and the Ombudsman has not been able to deal with those because it is out of his jurisdiction. The finger would be pointing at the Ombudsman's office because he is not able to satisfy that individual. However, it is through no fault of that office; it is because they do not have the jurisdiction there.

I am not disagreeing with what some of the members are saying--perhaps we should be talking to the Ombudsman--but I do not think it would even be in this report or other reports if some people did not feel there was a need to hold public meetings or hearings. I have no objection to asking the Ombudsman: "What are your feelings? Do you want to expand it or not?" However, because of the other comments that were made here a while ago after the bad publicity he got, he might be afraid he will be back on the front page again. I get the impression that he is saying to the committee, "I would like you people to deal with this particular situation." He does not want it to appear that he wishes more power per se.

I believe we should proceed.

Mr. Bell: I have to agree with the view of Mr. Morin and Mr. Philip that if at all possible, you should conduct one set of hearings. I do not mean to reverse what I said before, because I still believe the first priority is to get that bill tabled; to get those amendments considered and passed. That is affecting the Ombudsman's day-to-day business operation. Anything we can do to assist in that regard should be done.

Having said that, if Dr. Hill comes back and says: "There is a need. The scope is X and I believe I am the appropriate person to undertake that scope," it is impossible to give adequate consideration to that question without looking at the organization and operation of the office.

By the way, you do not need any recommendation. You do not need anything but a motion of this committee to do that. One of your terms of reference, in fact two of them, one through the report he tables every year and the other through the general rules jurisdiction, give you the authority to undertake that type of review at any time if you consider it necessary. It has been done in varying detail in other years. The review of the office's operation, when it was considered necessary, used to be much more rigorous than it had been.

I think you have taken it as far as you can today. Mr. Morin is right. Let us identify the need to undertake the review, and if that need is identified, then you do it thoroughly at one time, with the caveat that it should not interfere with the timing of the consideration of any amendments and their ultimate passing. It may be possible to do those concurrently. By the time the issue of expansion comes around and you decide you want to consider those in a public hearing sense, the amendments will be there and you can dovetail them.

Those who are of the view that after 10 years that type of an exercise may be appropriate can decide to make that part of it. I do not think you have to predetermine that now. My own view is if you consider in a set of hearings the question of amendments and the questions of these three issues, you are doing that in the overall review of that office.

Mr. Philip: I have got kind of a rough motion that I think would solve our problems, and perhaps legislative counsel can comment on it. This is my rough motion--

Mr. Bell: Let us hear it.

Interjection: Do I get to comment on it too?

Mr. Philip: I move that the committee advise the Ombudsman that in as much as the Office of the Ombudsman has been in existence for over a decade, the committee is about to undertake a broad and extensive review of the role of the office, including operations, functions and objections; and that prior to undertaking this investigation, the Ombudsman be asked to appear before the committee with suggestions as to relevant questions that should be looked at; that the Ombudsman be advised that included in the investigation will be the questions raised on page 10 of the 13th report, and that the Ombudsman be further advised that the inquiry will include public hearings.

Mr. Bell: I suggest that your motion be tabled and that any discussion of that be deferred until the Ombudsman has had an opportunity to receive and consider that motion and appear before you. In fairness to him, he is not present today and was not alerted that was a matter that was going to be discussed, and I am sure he would have some views and want to make some submissions to you on it before the final decision is made. It is something you would expect him to do if he was affecting a third party in an investigation or report. I think he should be afforded the same opportunity, and if you concur, may we have the motion received and seconded. We can then try to arrange some time, within the next few weeks or sooner, to try reconvene with him and staff to address that issue.

Mr. Philip: I will simply give it as a notice of motion then. The clerk of the committee can forward it to the Ombudsman, and perhaps the chairman will make arrangements to schedule a meeting with the Ombudsman to discuss it.

Mr. Shymko: It is fine as a notice of motion, but I do not see the concerns we have expressed and discussed for the past hour. What we are doing is putting the cart before the horse. The indication here and the recommendations in the report that was tabled before House is the whole question of expansion. The general analysis of the overall operation of the office will flow out of that discussion of expansion. If there is a motion that I would be comfortable with, it would be simply a motion that this committee plan to set up a timetable for public hearings on the question of expansion. We would like the Ombudsman to appear before this committee to indicate his commitment and desire for such expansion before we proceed.

Part and parcel of the discussions in these public hearings will be the overall general operation of his office. That is the way I see it.

Interjection.

Mr. Shymko: No, it is quite different. Ed is very diplomatically packaging a motion. There is no reference to expansion of the office at all in his motion, as you can see.

11:10 a.m.

Mr. Philip: I am sorry you were not listening, or you would have seen that I said as part of the motion--and you will read it in Hansard--that some of the questions that will be addressed are those on page 10, and that is on fairly clear. On page 10, if you look at the standing committee's 13th report, which is part of the motion, it states the questions of page 10, and the questions on page 10 deal with the expansion.

Mr. Shymko: After meeting for an entire year since the standing committee has been established, I hear for the first time today a recommendation for an overall general analysis of the whole operation of the office, which we have never discussed.

Mr. Philip: It has been discussed. If you read the Hansard, my goodness, we have discussed it several times.

Mr. Shymko: Where is it in the recommendations?

Mr. Philip: I am sorry. We have discussed it. We have referred several times--and it has been brought up by several members--to the fact that the office has been existence for some 10 or 11 years and that it might be worth while to have a review of that office. It was not just me who brought that up; there were other members. To say that it is suddenly a new idea, either you have very bad recall or you were not here when it was discussed, but it was discussed.

Mr. Shymko: I do not recall that we were to set up a public inquiry and public hearings on the overall operation of the office. The only public inquiry and public hearings reference we have is for the expansion. I have read all of the recommendations, and there has never been a recommendation for the overall operation. This is a recommendation--

Mr. Philip: It was never moved. I just moved it, but it was discussed that it was time to have a general review of the office. The Hansard is clear on that. If you go back and read the Hansards, we discussed it several times. If I am not mistaken, even the Ombudsman has suggested that might not be a bad idea, that it has been in existence for some time.

Mr. Shymko: The public hearing reference is only for the expansion, and I think we should proceed with the reference of the decision of this committee.

Mr. Philip: If that is what you wish, you can amend my motion. That is the way you can do it.

Mr. Shymko: That is what this committee wishes. That is what we have wished and that is what we have talked about.

Mr. Hennessy: Just speaking on the motion that was read out. To use the words "inquiry" or "investigation" makes good media coverage. You are going to investigate. What are you going to investigate? You could change the wording and have "review" or "assessment." With "investigation," it makes it look --you are investigating what?--Ombudsman's office to be investigated.

Mr. Philip: Perhaps the clerk can substitute those words. I am perfectly happy with that. I think Mickey makes a good point.

Mr. Hennessy: I am ahead. I will go home now.

Mr. Sheppard: We have been discussing it long enough. I like the suggestion that Mr. Morin put forward about half an hour ago. The motion we have been discussing is a little too long and there is too much detail. I would prefer to see a shorter motion and get on with the business.

Mr. Chairman: This is a notice of motion. Counsel tells me that the motion can be fine tuned.

Mr. Bell: Notice has been given in the language framed by Mr. Philip, and it is specifically directed to Dr. Hill at his office, and the intent is that when they receive the transcript, they will have the formal notice of what this committee intends. In fairness to Dr. Hill, he will then have the opportunity of considering the matter and preparing his comments and submissions to you when you next convene to discuss that issue.

I would suggest when you do that you leave that as the only item on the agenda, and it is perfectly open for anybody at that time to make suggestions for amendments, reduction or expansion of the motion, as it is considered necessary. I think you are better off leaving that now rather than tinkering with the language. It certainly captures the substance of the points of view that have been expressed today.

Mr. Shynko: Am I clear in understanding that the intention of the motion is to have the Ombudsman come before the committee and indicate to us the answers to some of the questions we may have with regard to the expansion of his office?

Mr. Philip: No.

Mr. Bell: No, the question of the overall review that is contained in Ed's motion.

Mr. Shynko: In other words, the question of the expansion will not be addressed with the Ombudsman.

Mr. Philip: It is in there, for heaven's sake. Can you not read? I have explained it to you two times. You even have a reference to it. Read the damned motion. Of course it is contained in there. How many times do we have to go through the same issue?

Mr. Shynko: I go back to the initial discussion. We wanted to have some indication from the Ombudsman on the whole question of his commitment and desire to expand and that indication probably would be forthcoming at a discussion we would have with him in his presence here.

Mr. Bell: On that issue, in further fairness to the Ombudsman, I think he should be given a longer period of time to prepare those submissions. As for the motion Mr. Philip put, in the concept of the overall review, which would of necessity include a consideration of the expansion, but on the question of an overall review which has wide parameters, Dr. Hill should be given notice and come before the committee when it next convenes to address singly the issue of the overall review.

The discussion might be short. He might come and say: "I think it is a great idea. If we can do the amendments and the expansion in that, let us get it done." That will assist you.

Mr. Morin: Perhaps I could make a suggestion. I think when I originally raised this issue, the question was very simple. We would like to know from the Ombudsman why he feels there is a need for an expansion of a section of the Ombudsman's office, why there is a need to have an Ombudsman on a municipality. That was the question. That would have taken some time to prepare for. I think it would be unfair to bring the Ombudsman to participate in this debate. He never asked for that. Shall we now at this time pass a judgement and ask that we should now review and question the existence of the Ombudsman? I do not think it would be fair. That is my opinion.

I think there is one question only: "Why do you feel there should be an expansion?" He did not say that. "Why do you feel there would be a necessity for an Ombudsman to investigate complaints against municipalities?"

Mr. Philip: Why do you want to prejudge what the Ombudsman is saying?

Mr. Morin: Just a minute. That is the only thing. That is the only question. I do not see the necessity of conducting a hearing to do that. If it is the wish of the committee to conduct a hearing, let us have one hearing. Let us bring all the questions we may have in mind, but the danger of hearings is the harm that we could do to an excellent office and it would not be able to defend itself. We are there to report to the Legislature on whether these people do their jobs properly. We are there to report to the Legislature cases where we need the support of the Legislature, cases that the Ombudsman has investigated and in which he needs our help.

I think it would be too hasty to start conducting hearings. He has raised questions. We want to know the answers. What does he feel? Why does he feel it is necessary to ask these questions? We would like to know his feelings. He did not say anything. He just raised the question. There are other bodies that could give us a feeling, some feedback. Is it really necessary to have an Ombudsman? It is not the first time it has been questioned. It has been questioned in Alberta.

Mr. Shynko: A general review is what will happen.

Mr. Morin: All right, but let us go at it in a very--

Mr. Shymko: Narrow.

Mr. Morin: --narrow way. Let us not embarrass the Ombudsman. Let us not have him become a victim of our discussions.

Mr. Shynko: Exactly.

Mr. Morin: I do not think it would be fair to the Ombudsman.

Mr. Shynko: You will have a lynch mob trying to eliminate the Office of the Ombudsman.

Mr. Morin: That is right.

11:20 a.m.

Mr. Philip: I have heard a lot of silliness in my time in committees, but that has to be the silliest remark I have heard. I do not know why people want to prejudge what the Ombudsman is going to say on my notice of motion. The Ombudsman may well come and say, "A general review will be helpful, because I am so confident about my office that a number of people are going to come forward and say it is an essential office that is performing a good function, but here are a few changes we would like."

My feeling, from what is out there now, is that the Ombudsman has considerable support and that in any kind of public hearings, particularly if we are inviting informed groups such as some of the ones I have suggested, people will come forward and say: "We applaud what the Ombudsman is doing. However, there are a few suggestions or proposals we would make." I do not think that is going to be harmful. It will highlight the Office of the Ombudsman.

Nowhere in my motion is the issue of whether the office should be abolished. That is a red herring. I never suggested that. I do not think that is what was proposed. Our proposal was to have a broad general review of the office since it has now been in existence for 10 years. My proposal stands, it is a notice of motion and I ask that the Ombudsman comment on that.

Mr. Chairman: Is there any further discussion?

Mr. Shymko: It is a notice of motion and I think it would be very important for us to hear from the Ombudsman whether he would like to proceed with a general review of his office or in more--

Mr. Philip: Good. Then you are in agreement.

Mr. Shymko: If that is the intention, then I concur. I think it is a fine motion. I am trying to say there are people out there in the public, notwithstanding a number of us in the Legislature, who probably are very critical of the office and we would have to be very careful that in a general review of the office we do not unleash that criticism and do more harm to the office than with a more limited, fixed review of an expansion which is positive, which highlights the need, which highlights the necessity and the importance of the operation of the Ombudsman. That is my concern.

Mr. Philip: You do not think that somebody who has an axe to grind and who wants to attack the Office of the Ombudsman cannot attack it under those narrower definitions?

Mr. Shymko: Sure.

Mr. Philip: If I had an axe to grind with the Ombudsman and wanted to make a presentation and get some publicity by attacking the Ombudsman, I could fit my remarks into those terms. I could say, "You want to expand the office? Here is my expansion of where he has buggered up in the area in which he already exists," and give my whole story anyway. You are not going to stop that.

Mr. Shymko: Absolutely not. But with a general review, I think you will agree, you just open up the gates for a wider scope of criticism.

Mr. Philip: I am not convinced that will happen. I think the media are fairly clever. They can distinguish between quacks and people who have individual--

Mr. Shymko: The media?

Mr. Philip: Yes.

Mr. Shymko: That is a sarcastic remark.

Mr. Chairman: Would the committee be in favour of having the Ombudsman appear before the committee three weeks from today to discuss this matter?

Mr. Shymko: Sure.

Mr. Chairman: Is everyone in favour of that? That gives the Ombudsman some time. Three weeks from today?

Mr. Philip: I would give him a little bit more notice than that.

Mr. Chairman: You would?

Mr. Philip: Ask him how much time he would like.

Mr. Chairman: Maybe we can approach it this way: We will see whether he is available three weeks from today.

Mr. Philip: Why do we not leave it in the chairman's hands? I do not think he should be rushed on that.

Mr. Chairman: Fine. If the Ombudsman is able to appear three weeks from today, we will have a meeting.

Mr. Philip: I had a question on other business. That was the question of our northern trip. Have the dates been established?

Clerk of the Committee: The last time we met, the committee indicated it wanted to travel the first week in September.

Mr. Philip: Do we need a motion for that now that it has been approved?

Mr. Chairman: It has been approved.

Mr. Philip: All right, so it is the first week in September?

Clerk of the Committee: Traditionally, the committee has considered the Ombudsman's annual report in September. When does the committee wish to consider the Ombudsman's next report?

Mr. Philip: Why do we not do it after the trip? We may have some things that result from the trip that we may wish to discuss with him.

Mr. Shynko: What are the dates of the first week of September that you referred to?

Mr. Chairman: Labour Day is Monday, September 1.

Mr. Shynko: This would be how many days? From the first to the fifth?

Mr. Chairman: We planned on about a week, did we not?

Mr. Shynko: I had indicated on behalf of some other members that on September 5 right through there is the international French-speaking parliamentarians conference, and we have some problems with that; three members who are here today.

Mr. Philip: That is why we scheduled after that.

Mr. Shynko: After that?

Mr. Philip: Yes.

Mr. Shynko: This is why I am asking. We should do it after rather than before.

Mr. Philip: I am saying schedule it the first week after Labour Day and then have--what is it, the estimates of the Ombudsman that we have to deal with then?

Mr. Bell: Also his report.

Mr. Philip: And his report right after that.

Clerk of the Committee: The estimates will come out within eight days of the budget of the Treasurer (Mr. Nixon). That will be an item for discussion within a few weeks.

Mr. Philip: I recommend we ask the House leaders to allow us to deal with the estimates in September after our trip.

Mr. McLean: Could I have the clerk clarify for us the days that he has arranged? Is he looking at the first week or the second week? Has he confirmed anything?

Clerk of the Committee: No, not for the trip.

Mr. McLean: I know that Yuri had stated a concern with regard to the first week. The kids are back at school. Why would we not start the week after that, on September 8?

Mr. Philip: That is when we are scheduling it; the week after Labour Day. Yuri will be back from France.

Mr. Shymko: No one is going to France. It is in Quebec.

Mr. McLean: It has not been confirmed. That is why I am asking the question. I would like to have it confirmed when we are starting.

Mr. Chairman: September 8 has been suggested.

Mr. Philip: In the week of September 8, we have our trip into northern Ontario. In the week of September 15, we could deal with the estimates and the report of the Ombudsman.

Mr. Sheppard: That is the week of the ploughing match. Some of the fellows will not be here until the third week. The opening of the ploughing match is September 16.

Mr. Philip: You will not be attending the ploughing match every day.

Mr. Sheppard: Tuesday, September 16, is the day most fellows will be going.

Mr. Philip: You mean Wednesday, Thursday and Friday.

Mr. Bell: Could I make a suggestion? No one knows yet how much the Ombudsman is going to have for us in that next report in terms of the recommendation-denied cases, the ones that take the most time. In any event, you know there are certain recurring matters you discuss with him every year, which arise out of his report, systemic problems, statistical analyses and so on.

To serve a number of purposes--one of which would be to keep the time

through the week of September 15 that you would have to sit to a minimum because of other conflicts, and in any event I think it is a process that might be good for the committee or the Ombudsman and where you are going--I throw this idea out to you. If the decision is to go away for six days, five of which are business days, consider convening as a committee in public at some locations where you are going, to conduct with the Ombudsman the business of those recurring issues in his report to be tabled.

You do not have to sit in days. I would think you might do an hour and a half, two hours or less, perhaps three times during that period. You would make sure that everybody in the community where you do that would know in advance and be given an opportunity to attend. One, it will give them an insight as to how a committee operates. Two, it will permit you to do some business that you are going to have to do that month in any event. Three, it is good for the matter of south to north relations. It could be done quite conveniently.

The only issue we would have to address is the question of a transcript. That could be easily accommodated. I do not think reporting services are all that expensive. That might be a problem but perhaps we could arrange to have the process recorded for transcription later and therefore keep the cost to a minimum. I throw that out as an idea. It appeals to me and it solves some scheduling problems in the next week.

11:30 a.m.

Mr. Philip: Are you suggesting that we do a couple of decision-denied cases, John?

Mr. Bell: No. We keep the decision-denied cases to Queen's Park, because you have to call in some government organization people. For example, things such as organization and operation of the office, statistical analyses, systemic problems, recommendations in previous reports wherein something further is to be done, communications from the public, rules for the guidance--the things that you talk to them about every year when you consider their report.

There is no magic in doing those things down here. They can be done in any context, provided you have the facilities to group us together with the Ombudsman and members of his staff. The thing that appeals to me is that you would give the people in the communities where you would do it an opportunity to see what and how you carry on.

Mr. Shymko: The only problem I have is that you normally have a 10- or 11-month period when you review this, so it would have to be some time in September, would it not?

Mr. Bell: No, that is what I am saying; we do it when we go away. Do all of your ordinary business except the recommendation-denied cases.

Mr. Shymko: No problem with that.

Mr. Philip: Including the estimates.

Mr. McLean: I would like to ask our legal counsel for his reasoning behind that. There has to be a reason he wants to do that.

Mr. Bell: This is not in any order of priority or importance. One is

that you get some of your business out of the way that you would have to do when you come back, and that will relieve some of the scheduling problems for the week following, particularly for those who have commitments on September 16 for the international ploughing match. It would also probably ensure that you could get the rest of your business done in that week and there would not be any unfinished business. Second, I think it would be quite unique and--

Mr. Morin: Good public relations too.

Mr. Bell: That is the most blunt but the best way of saying it. You are taking the legislative committee process to a community that might never have any opportunity of seeing that in action, and, as well as you can, recreate this forum with the Ombudsman addressing you in some quasi formal way.

Mr. Snppard: Would you suggest we have more meetings at Minaki Lodge?

Mr. Philip: I have no objections. I think it sounds like a good idea. I suggest that we reserve two weeks, the first one starting on September 8 and the other one starting September 15, with the possibility that we may need another day or two in the next week, and that at our next meeting the clerk and the chairman bring back a report with recommendations, having met with Hansard and looked into the cost of recording services and the practicality and that we make a decision at that time.

Mr. Shymko: A purely technical question: Is there a portable Hansard?

Clerk of the Committee: No.

Mr. Shymko: Maybe you should devise one for that occasion.

Interjection.

Mr. Shymko: That includes the Hansard people, I am sure, for the recording purposes.

Clerk of the Committee: When committees travel and they require having their proceedings recorded or transcribed, committees have had to go to an outside freelance agency, which can be expensive depending on the committee's requirements.

Mr. Shymko: Because of the fiscal--

Mr. Hennessy: (Inaudible) bring somebody in from here.

Mr. Shymko: Absolutely.

Mr. Hennessy: I am just saying that you must have to pay them a good duck to bring in their equipment. Maybe we would be better off to go with somebody who knows--

Mr. Philip: Why do we not let the chairman come back with the report? We do not know what the answers to those questions would be. We could talk about them from now until 12 o'clock, but we are none the wiser. Let the chairman and the clerk come back with a recommendation to us.

Clerk of the Committee: We could investigate the options and the costs and report back at the next meeting.

Mr. Bell: Could I ask whether we could go in camera? This has to do with a matter that we have discussed in camera before, respecting a matter that involves legal counsel. Could we close our public business?

Mr. Philip: Are you asking for a raise again?

Mr. Bell: Please delete that.

Mr. Chairman: Is the committee in favour of going in camera?

Mr. Shynko: Are you not happy with the counsel, Mr. Chairman?

Mr. Philip: Delete it; I was just being facetious with that remark.

Mr. Bell: It would be the height ofchutzpah, though, would it not?

The committee continued in camera at 11:35 a.m.



STANDING COMMITTEE ON THE OMBUDSMAN

OFFICE OF THE OMBUDSMAN

WEDNESDAY, MAY 28, 1986

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Henderson, D. J. (Humber L)

Hennessy, M. (Fort William PC)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Clerk: Decker, T.

Staff:

Bell, J., Counsel; with Bell, Temple

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman

Zacks, M., General Counsel, Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

wednesday, May 28, 1986

The committee met at 10:12 a.m. in room 151.

OFFICE OF THE OMBUDSMAN

Mr. Chairman: Since we have representation from each party, we will open the meeting.

Dr. Hill, you are aware that a resolution which is before us was passed at the last meeting. We will call on you for your comments.

Dr. Hill: I have been asked to appear before you to speak to Mr. Philip's notice of motion, which was presented at the standing committee meeting on May 7. The motion deals with a review of the Ombudsman's office.

As you know, I have in the past and will continue to co-operate and assist the standing committee in all its efforts and deliberations. However, before this motion gets full airing, I suggest, and it is simply a suggestion, that it might be helpful to the committee to read and discuss my forthcoming paper on expanded jurisdiction. You will recall I was specifically asked to submit this paper to the committee, and my staff and I are working assiduously at it.

In addition to the question of expanded jurisdiction, the paper will have a distinct bearing on the administration and function of my office. It should be ready by late July.

I suggest that a discussion on the motion might be more fruitful after you have reviewed the paper. However, I am in your hands with respect to this matter.

That is my opening statement.

Mr. Philip: It is difficult to have hearings or studies that will involve the public during the summer months. I believe it is always more reasonable to start with some kind of paper or position you can begin by examining if you are going to do any investigation. I do not believe it makes very much difference whether we conduct our hearings or our study during the summer recess or put it over until the Christmas recess, when perhaps we will have a better handle on what some of the issues are, as a result of Dr. Hill's paper. Therefore, I suggest that I table my motion until after we have had Dr. Hill's presentation, and that no further action be taken on this matter until we hear from Dr. Hill. In other words, if we are going to conduct this study, we are probably going to do it during the Christmas recess, or start it during the Christmas recess rather than this summer.

Mr. Hennessy: Is it not better to do it during the summer? It will be easier for us to travel and interview people and discuss things. It is easier for us to get around in the summer than during the Christmas break when the weather gets a little difficult. If we happen to go up north, or wherever we go, we are going to get stuck. Nobody is interested in going up north in the winter. If we are going to do any travelling, the best time would be

during the summer recess. If the report is coming in and we are going on a different route, are we going to go by what the paper says or what we find out? These are two different things altogether.

Mr. Philip: Let me answer that, if I may. When the numerous committees on which I have been have had inquiries, we have invariably had criticism by various groups when we have held hearings on very short notice during the summer months, and this would be very short notice. Their complaint has always been that people are away on vacation and they have trouble putting papers together. They have trouble getting their people called together.

It seems to me that after 10 or 11 years of a very important office, we should not rush people but should give them the opportunity to come forward, whether they are social planning councils, local municipal councils, hospital boards or whoever else. They should not be pushed during the summer months when people are on vacations and when various associations do not meet to put their things together.

The other thing is that on a number of occasions, I have had people say to me: "My goodness. I wanted to appear before your committee, but I scheduled my three weeks' vacation and I was going to Expo at that time. Therefore, I cannot appear at that time." It is unreasonable to put that on people during the summer months if we can just as easily wait until the winter recess.

I do not know of anybody who has an awful lot of trouble in the major centres we visit. I have been to hearings in Thunder Bay in the middle of winter. As a matter of fact, it is easier to get around Thunder Bay in the middle of winter than it is Toronto in the middle of the slush. To be productive, it seems reasonable to hear Dr. Hill's point of view. Whether we agree or disagree, it at least gives the public, or whomever may want to appear, something to either agree or disagree with, or take off from.

You cannot hold hearings in a vacuum. Politics are not psychoanalysis where you sit down with the tabula rasa. You have to give people something that stimulates their imagination, either negatively, positively or mixed, and then you get some productive and creative ideas out of them. If you simply say that we are going to hold hearings, people will ask: "What is your focus? What do you want to know?" We would be better able to tell them what we want to know or what the focus is if we have some kind of paper from the person who is the incumbent in that position.

Therefore, I am tabling my motion until after Dr. Hill presents his report.

Mr. McLean: If Dr. Hill could indicate to us the approximate time he thinks he will have his paper prepared, we could possibly leave two or three days after that to review his paper, and then determine what steps we should take and whether we should meet for two or three days in August. If he can indicate to us approximately when his paper will be ready--it may be ready at some time in July--then we can meet after that and review it.

Dr. Hill: The paper should be ready during the last part of July or the first week in August.

Mr. Philip: We are meeting in September anyway, so we could deal with it in September.

Mr. McLean: Or we could meet for a couple of days in August just to review it and to set our next steps.

Mr. Philip: Sure.

10:20 a.m.

Mr. Morin: I concur with Mr. McLean. We should look at the paper first. It may not be necessary to conduct a hearing. We do not know until we see the report.

Mr. Philip: That is right.

Mr. Morin: If such is the case, then at least we will be satisfied. We will know exactly what the Ombudsman wants to express. He will have a chance to voice his opinion clearly. We were going in a more or less haphazard sort of way. We did not know where we were going and we will know better once this report is submitted. I would suggest that we make a decision at that time.

Mr. Bossy: I would concur with that. If the paper indicates some serious considerations that have to be taken care of quickly, there is no reason we cannot conduct hearings, even when the House is sitting in the fall, if it is that important that we bring in the witnesses or the people who want to be heard. There is no reason we cannot do that. Until we see the paper and review it, it would be wrong for us, as a committee, to make a decision that we will go ahead now with something about which we do not know.

Mr. Hennessy: If I remember correctly, when the motion was put forward it was set as a hearing, I asked that it be listed as a review. It is up to us, as legislative people, to review what has transpired in the Ombudsman's office during the past 10 years. Nobody says you are having a hearing. Nobody has done anything wrong. We want to review it. We all review our lives from time to time. We all review other things. If we are only going to review it, there is no sense in saying it is a hearing. This word has been used, but it is a review. We are entitled to review it for the people whom we represent. That is the long and the short of it all.

Mr. Sheppard: I have to agree with my colleague, Mr. McLean. My question to the clerk would be this: How long do they usually have to advertise this in the paper? Is it three weeks to six weeks, or what?

Clerk of the Committee: To compile and place a full set of advertisements, depending on how extensive you want the advertisements to be, would require a minimum of two weeks.

Mr. Sheppard: I would agree with some of the rest that we wait until we hear Dr. Hill's report and then go from there.

Mr. Bell: Dr. Hill, is there any more recent information as to the timing of the bill amending your act?

Dr. Hill: I do not know, Mr. Bell. It is in the hands of the Attorney General (Mr. Scott). I hope that it will be soon, but I cannot predict when that is going to take place. It is in his hands and I know that he intends to move it, but at what date and what time, I do not know.

Mr. Bell: Mr. Philip's and Dr. Hill's suggestions are most appropriate in the circumstances. The only comment I would have to make is on the question of the timing of any hearings that may be decided as necessary, although that is an open question.

You have already concurred, when you last addressed this issue, that you should not run into it quickly because there could be as many as three issues relevant for such a set of hearings. There is the one embodied by Mr. Philip's notice of motion, but there is the matter of expanded jurisdiction that you are addressing your efforts to in your paper. There is the last one, being the amendments. If you are going to do something in terms of a hearing, it is eminently practical to have all those issues addressed at once.

While you have been waiting since 1978 for a bill amending your act, one hopes that we would give the Attorney General some reasonable further opportunity to have it tabled. I do not know whether it is too much to expect it to be tabled before the session adjourns. That timing would be very helpful. That is all. Thank you.

Mr. Chairman: Is the committee in favour of Mr. Philip's motion?

Mr. Philip: There is no tabling motion.

Mr. Chairman: Is the committee in favour of tabling the motion?

Mr. McLean: Has a copy been tabled yet?

Mr. Philip: I tabled the motion immediately. I tabled it for after Dr. Hill has presented his paper.

Mr. Chairman: Is the committee in favour of deferring the motion until after Dr. Hill presents his paper?

Agreed to.

Mr. McLean: I thought Mr. Philip would have given notice at that time that he would be tabling a motion today. It has not been tabled.

Mr. Philip: I gave notice of motion that I would be tabling it today. I took it off the table until such time as the--

Interjection: You tabled the table.

Mr. Philip: I tabled the table.

Mr. Bell: It is now a chair.

Mrs. Meslin: A shelf.

Mr. Philip: You have to have been chairman of the standing committee on administration of justice for a number of years to be able to get yourself into these kinds of gyrations.

Mr. Bell: Or be a lawyer. I guess we do not have to know when Dr. Hill expects his next annual report to be tabled.

Mr. Chairman and members, when we last met, you will remember I suggested that during your travel to the north in September you might consider conducting the part of your hearings referable to the Ombudsman's annual report there. These are the recurring issues you generally attend to, such as statistical analysis and organization, operation of the office, amendments to the act, and any specific comments the Ombudsman may make on any matter in his report.

I suggested this for a couple of reasons. First, it would be an extraordinary event. It would give northern residents an insight into the committee process, for good or bad, which they would never have. Also, on the productivity side, it would get some of your business out of the way. When you returned, you would deal exclusively with recommendation-denied cases.

Do you have any observations about such a suggestion, Dr. Hill? Is there merit in it?

Dr. Hill: To answer your first question, I expect the annual report to be ready and tabled by June 19--in fact, it is just about ready now.

The other point I would stress is that I would be more than delighted to see this orientation, with a discussion of my annual report taking place in the north. I have tried to exercise certain northern initiatives. It is a good idea. It is a way of decentralizing, so that we are not always in Toronto discussing these things in the Legislature, and the people of the north would get an opportunity to see exactly how this committee and the Ombudsman function. It is a first.

I will be there. I also would be pleased to attend with you on your visits to the reserves in September. They are both in line with my earlier commitment for more service and more opportunity for people in the north to see what we are doing.

10:30 a.m.

My executive director reminds me of one thing. If a lot of staff is required, I may need your help with budget. I have not budgeted for a lot of staff to go there. I may need some financial assistance from you for travel up north with a staff.

Mr. Morin: We will transfer it from Toronto to the north.

Dr. Hill: That is right.

Mr. Morin: We want to do that. That is a recommendation. We want to do it with the civil service.

Mr. Philip: It is a good idea. In addition to going through one or two denied decisions, part of your exploration at the moment is the inquiry into the Ontario Housing Corp. I do not know whether you plan to bring in a special separate report.

The first part of your concentration is a particular northern situation, as you mentioned to us. That is going to be a lot more complicated type of case. It is not the kind of thing we will resolve or deal with in half a day. It is a northern issue, with people living in tents and some of the other atrocities that some of us have observed and that you certainly have observed. Will you have that part of the report ready? Is it your feeling that we should deal with the northern part of the Ontario Housing inquiry when we are on our northern trip or would you rather deal with it as a package, if your total analysis of what is going on in Ontario Housing will delay the report?

Dr. Hill: I cannot say that report will be ready by that time. It is a very delicate, tough report. We are in the middle of it. We will be discussing the annual report. That report will not be part of the annual report. It is a little too early for it. We may need to deal with it separately.

Mr. Philip: As a supplementary, do you feel that the northern part of your inquiry into Ontario Housing, which I gather concentrates on one city or one location, will be separate from the other part? At present you have some staff investigating the Metro Toronto Housing Authority and some of the urban housing problems. Will you be introducing one report on Ontario Housing?

Dr. Hill: It will be part and parcel of it; they will be together. No, let me correct myself. We will be dealing with just the Timmins and Moosonee areas in that report. Because of staff limitations and because we cannot handle both of them, we have not yet looked at other areas of Ontario Housing, so I cannot speak to the other factors we are concerned about and indeed, will not neglect. I cannot yet speak about that as a report or as a study; at this time, I can speak only about the Moosonee-Timmins report, which I consider a most important and priority effort.

Mr. Philip: The Moosonee-Timmins report will probably be in September or later, but it will be a special report. It will not be part of the general report.

Dr. Hill: Exactly.

Mr. Philip: Is it your feeling that when we get that Moosonee-Timmins report, our deliberations on it should be held in Moosonee and in Timmins?

Dr. Hill: I had not considered that but in all fairness, the Timmins Housing Authority and people in that area would want to know and would want to question us. I have assured the housing authority and the Minister of Housing (Mr. Curling), in getting the co-operation of their people, that we would do it with their co-operation. We would discuss it fully with them. We would meet with the Timmins board. My answer is that yes, it should be there.

Mr. Philip: Moosonee and Timmins would have to be part of a different trip from the northern trip we are now scheduling. There would be a separate set of meetings.

Dr. Hill: Yes, absolutely.

Mr. Shymko: Could I ask a supplementary? As you recall, Dr. Hill, that it was during your presentation to this committee we found out about your special investigation of the Timmins Housing Authority. I am sure you share the concerns Mr. Philip and I expressed when you made your report. There are housing problems in other parts of Ontario that are just as serious, and maybe more serious in the metropolitan area. Through the day-to-day complaints that some of us receive, there are some major problems with that authority.

When you began your investigation, was the process initiated by a local request or by your own discretion, having seen some of what Mr. Philip described as a horrifying situation?

Dr. Hill: This was initiated on my own. It was initiated based on the things I saw; I considered some of the problems of priority in terms of effort and of people living in tents in 20-below-zero weather. I cannot think of any other area of the province where housing conditions would be so severe. I used it as a priority effort. I have a limited staff, but I felt it necessary for the reasons I mentioned, so I initiated that on my own.

I should stress that before I initiated it, I met with the Ontario

Housing Corp. and the chairman and other people from the Timmins Housing Authority. I was given their total and complete co-operation. They said they would like to be part of this investigation and would assist all the way down the line. They wanted to be given progress reports of how we were doing.

Since that time, I have issued two progress reports on the nature of that investigation to the ministry. I am doing it with their total co-operation.

Mr. Shynko: Is it, therefore, your preference to have the discretion left to you to decide whether you should proceed in a similar manner with other housing authorities in the province? Do you think it would be of assistance to you if some of these concerns were voiced either by a committee or otherwise?

Dr. Hill: I am aware of some of the other problems. I have been getting material from Mr. Philip and from other people regarding housing matters. I have very limited staff resources. I would like to do this first and then turn my attention to the other.

Mr. Philip: May I suggest, Mr. Chairman, that once Dr. Hill indicates the Timmins-Moosonee report is ready, you and the subcommittee, along with the clerk, schedule the hearings at your discretion. It may be in September or it may have to be later once the House reconvenes. I do not think we can deal with it now.

Dr. Hill, I have been sending you a number of what I consider systemic problems, in particular with regard to transfer policy, but also with regard to other policies in the Ontario Housing Corp. The Provincial Auditor is also having some real problems with the Ontario Housing administration, as you well know. I have been dealing with these in the standing committee on public accounts.

I want to stress to you that I realize your restraints as far as staff is concerned, but I have been telling a lot of people that they can expect a report, similar to your systemic analysis of the Workers' Compensation Board. Do you have any idea of when we might expect the report on some of the real atrocities, manipulation and bad administration by Ontario Housing, particularly of housing authorities such as Metro Toronto Housing Authority?

Dr. Hill: I am continuing to gather that material and am keeping it in a separate folio. I am apprised of it. After I finish this current work on the Moosonee-Timmins area and the resulting report, I intend to turn my attention to other areas of Ontario housing. In fact, it might come out of the Moosonee-Timmins report.

10:40 a.m.

Mr. Philip: What happens with individual cases, such as the one I raised with you and in the House of Mrs. A, who unfortunately cannot get a transfer? They do not consider a foster child who has been living with her for a couple of years to be a permanent situation. Therefore, she is left with a teen-aged boy, a girl and herself in a two-bedroom apartment, which is hardly conducive to encouraging Ontario Housing tenants to become foster parents, nor is it a terribly healthy situation.

What happens in a case such as that? Will you be dealing with each of these cases one by one and later drawing a general report?

Dr. Hill: Yes, we are. It is going to be part of our experience. As a basic case, and perhaps Mrs. Meslin will speak to it, they are being handled in the normal case load and will continue to be handled that way, drawing from the experience and from anything we can see that might assist us later as we go into a fuller investigation.

Mr. Philip: In the case of Mrs. A, you will be saying, "This is an unfair policy, you should change it." You will then be drawing from that and putting it into the package of your general report later.

Dr. Hill: I do not have Mrs. A's case in front of me, and I cannot answer that in an exact sense, but we will handle it in the normal way.

Mr. McLean: I have a couple of questions. I thought most housing authorities that wanted to do a study in a community could apply for grants from the Ministry of Housing or from the Ministry of Municipal Affairs. They would then hire a consultant, or somebody, to do the study.

Why are you proceeding to do the study when there are other avenues, such as ministries, that should be doing it? You can get into a whole field here that determines which area is most in need and which one you feel should be looked at. The Ministry of Housing should be providing the funds for a consultant to do that study. Why are you are doing it?

Dr. Hill: Earlier I mentioned that this has come out of a variety of extreme hardship cases in that area. An Ombudsman has to take particular note of that. The cases were so extreme and so worrisome that, first, it was necessary to talk to the top housing authority officials about them and discuss the possibilities. They consented; they agreed; they felt it was very necessary and have turned over, not their financial resources--I do not think I need too many financial resources in this area--but every area of investigation, conciliation and help to work with us on it.

It is a co-operative venture. I stress that over and over again. It is one I thought I as an ombudsman should take in the light of what I saw in that Moosonee-Timmins area. I do not think any of us would like to live in tents in 20-below-zero weather.

Mr. McLean: In your position, could you not have directed the Ministry of Housing to do exactly what you wanted done?

Dr. Hill: I certainly could not have ordered or directed it. I might have asked it. I do not know whether it would have done it, but in the meantime, we had the information. I have a person on staff who is an expert on the area. I thought I would exercise some initiative and start on it, with their co-operation.

Mr. Shymko: I have a question for information. You may recall this, Dr. Hill. Some years ago, a Lesbian couple resided in an Ontario Housing complex under either Metro housing or Metro Toronto Housing Authority, I do not recall. They were evicted on the basis that one was the natural mother of a five-year old child. The eviction was given on the basis that this was not the proper environment to raise a child. It was in the paper, as I recall. Apparently, the Human Rights Code did not have that part of the amendment to give protection.

Can this criterion still be applied? Have you seen, or do you see, this still being applied with the present code?

Dr. Hill: I know the code did not apply. Under the amendments to the code, it might. Unfortunately, I do not know enough about that case to comment on it. I would like to look at it carefully before I comment on it. I know there are some press clippings, but one cannot get facts out of press clippings. I would prefer not to comment on it until I look into it further.

Mr. Shynko: I recall that the code was being referred to as justifying that type of action in public housing.

Mr. Philip: The new Human Rights Code, which is before the standing committee on the administration of justice, is dealing with that. There is consensus, or at least majority. If I am not mistaken, all except one member of the committee voted in favour. It is before the justice committee at the moment. I understand they are up to section 17 or something like that, which greatly distresses me, because I wanted to make a presentation on section 10. However, it does cover that, so it will not be an issue.

Mr. Shynko: If passed.

Mr. Philip: It seems to have the support of all three parties, so there is no reason it should not pass.

Mr. Chairman: Is there anything further?

Mr. Bell: How many recommendation-denied cases are in your forthcoming report?

Dr. Hill: There are four.

Mr. Bell: Assuming that is the maximum number, that is very manageable for the week that is set aside when the committee returns from the north, even on a reduced basis. I believe that is the week of the international ploughing championships. Even if we did not meet on the day of the opening--is it Tuesday, September 16?

Mr. Sheppard: Tuesday.

Mr. Bell: Even if you do not meet that day, but meet Wednesday, Thursday and perhaps Friday morning, chances are very good that you will be able to complete all of it.

I am a little out of order, but if I can presume to do so, I would urge you to decide now to conduct some of your hearings on nonrecommendation-denied matters as contained in the Ombudsman's next report, or which may be otherwise on your agenda. Will you deal with those in some of the northern communities you visit?

It seems to me that if you believe it is a good idea, you should decide now so that your staff and Dr. Hill's staff can start organizing that with the various communities. There will be some organization involved, not the least of which is the selection of the communities to be done. It will have to be reported in some way for record purposes.

Does anybody want to put that in a motion, since I do not have the status to do it?

Mr. Philip: I will put that motion.

Mr. Shynko: What is the motion?

Mr. Bell: That you conduct some of your hearings referable to the Ombudsman's next report during the week of September when you--

Mr. Shynko: Which week would that be?

Mr. Bell: It is the week that you decided last time, which I believe is that of September 9.

Mr. Shynko: I will repeat this for the third time. Three members of this committee are members of the Ontario section of the International Association of French-Speaking Parliamentarians, and their general assembly is being held that week in Quebec City. We will probably know in about two weeks' time who the delegates--appointed, chosen or elected--will be.

I would suggest that we do not make a decision today, pending the information as to who among the three of us--it could be all three, or none--will be attending that conference.

Mr. Chairman: I understand that conference takes place the first week in September.

Mr. Shynko: No, it does not.

Mr. Bell: Does it take place the week of September 9?

Mr. Shynko: There is a big do here on Friday, September 5, and the conference officially opens on September 8. It runs that week, September 8, 9 and 10. At least the first three days of that conference would create a conflict.

Mr. Bell: Perhaps the committee could decide in principle that it will conduct those hearings in the north, the date of same to be determined subsequently having regard to the various other commitments members have. I am sorry. When we last talked, I thought that it was in the week of September 2, but that does raise a problem for three of you.

10:50 a.m.

Mr. Chairman: I have marked down September 8. I thought that was clear, but apparently it is not. What about the previous week?

Mr. Chairman: What about the previous week?

Mr. Shynko: Except for Friday, there is no problem.

Mr. Chairman: It is a short week.

Mr. Morin: I do not know when Labour Day is.

Mr. Bell: It is September 1.

Mr. Shynko: September 2, 3 and 4 would be no problem.

Mr. Bell: Except that it is a short week and you plan to do a lot when you go to the north. You need to go up on a Sunday night, have most of the five days and come back either Friday night or Saturday morning because it

is a full schedule. As Mr. Morin will tell you, you are more spread out in the northwest than you were in the other location, and there are more communities to choose to visit there as long as you go to Sandy Lake.

My only thought is to give those who have to organize this as much advance notice as possible. If we can get together in the next two or three weeks, perhaps it will not be a problem.

Mr. Philip: Why not get the steering committee together?

Mr. Bell: The problem is that you have to recanvas everybody's schedule.

Mr. Philip: Surely the member of each party on the steering committee can--

Mr. Bell: That is all right.

Mr. Chairman: is there any further discussion? When will we meet again? Should we meet in two or three weeks?

Mr. Philip: Rather than have the steering committee meet, why do you not call the whole committee together for half an hour and have lunch?

Mr. Bell: We are going to do lunch, as the yuppies say.

Interjections.

Mr. Chairman: On June 11?

Mr. Bell: Does that give you enough time, Mr. Shymko?

Mr. Shymko: Yes. We should know by then.

Mr. Bell: Lunch on June 11? We will book something off the dining room or have sandwiches in here.

Mr. Snepppard: Will notices be sent out for this meeting on June 11?

Mr. Chairman: Yes.

Mr. Philip: Do you need an update report from you or me to the committee on our presentation before the standing committee on the legislative assembly?

Mr. Shymko: Which has not been completed yet.

Mr. Chairman: Does the committee want that report?

Mr. Shymko: I am sure Mr. Philip can eloquently tell you what happened.

Mr. Philip: Do you want that on the record or do you want--

Mr. Bell: Put it on the record.

Mr. Philip: Mr. Shymko accompanied me along with the chairman. Ms. Meslin was in the gallery, so to speak, for moral support, and John Bell was

with us. I had a problem because since we prepared the report the Attorney General (Mr. Scott) has turned in a bill with proposed amendments. I was faced with having to make the decision, and we made it jointly, that I would present the report on the original bill on the assumption that something is law only when it passes through at least the committee stage, and these amendments have not yet passed. I then had to address myself to the complication of the minister's amendments. The minister's amendments took away part of our argument.

Mr. Shynko: The strongest one.

Mr. Philip: I do not think it was the strongest one, but it took away the argument because it basically exempted the Ombudsman from reviewing the decisions. Therefore, they would not automatically come to the committee. You may recall that part of our argument was that it was stupid to have two different committees dealing with the same matters. We addressed that question. The way in which I handled it was that while I had presented the other information as a consensus of all three parties, I simply voiced a personal view, a view for which John Bell had some empathy, that the amendments of the Attorney General, which perhaps made our argument not as strong, were also contrary to section 15 of the Charter of Rights. That blew some other minds. They were not quite prepared for that argument and did not look too pleased about the whole thing.

The basis of my argument was, how can you have other tribunals such as the Ontario Human Rights Commission or the Ontario Labour Relations Board having their decisions appealable to the Ombudsman, and through the Ombudsman to the committee, if you do not include the freedom of information tribunal? Somebody could use section 15 of the Charter of Rights to say he or she was being treated differently or unfairly. They had not thought about that and we strongly suggested they should get a legal opinion on it.

The other thing we argued was that, under their act, there is basically nowhere to go if the commissioner is told to take his report and--take his report. What happens? Does that mean he goes to the media and you get the kind of situation you have in British Columbia, where you get a polarized situation, or does he take the government to court? The act is silent on that. We suggested strongly that if they did not want the kind of polarization that has happened in other areas, they would be better to have some committee, if not the Ombudsman's committee, to which decision-denied cases would be referred.

We seemed to interest them so much that they decided they did not want to hear us any more. They became very uncomfortable that it was taking so much time and that so many people had so many questions. We said we would be happy to reappear. They had other witnesses that had come from out of town and so forth, and that is where it stands.

It was a most enjoyable morning, despite the fact we made Ontario history and did not get one report in any newspaper. Not one person in the press gallery, other than one reporter who is going to do a feature on it in a couple of weeks, expressed any interest whatsoever about our making Canadian history. I do not know whether that says something about us as presenters and communicators or about the gallery and where its interests lie.

Mr. Shynko: Why did the Attorney General make that change? Had he thought about it, there was a great deal of wisdom in having those lists of exemptions in the proposed bill, which would have allowed the Ombudsman to be

the final decision-maker and to have that involvement. Why this sudden change? Did it have something to do with the fact that rumours may have been around or may have reached the Attorney General's office about the concerns of this committee?

11 a.m.

Mr. Bell: I do not know, Mr. Shymko. Not to sound facetious, that question should be put to Mr. Scott. It is easy to see that the drafters of the legislation wanted to exclude the jurisdiction of the Ombudsman from that process as much as possible. There could be any number of reasons for it. I will defer to your office, Dr. Hill, but I think it is the only circumstance in Ontario whereby a governmental organization that would otherwise be within your jurisdiction has been expressly excluded by statute. Michael Zacks is snaking his head, which shows you how much I know about provincial statutes.

In any event, it is the only one I am aware of that has come down the pipe for some time, and I mean it. That is aside from the formula and test proposed by Mr. Justice Morden in the decision regarding the application of your predecessor's jurisdiction under the North Pickering matter. I do not know the answer to that question. I guess it is a policy decision. It is a point of view whether the public should be denied access to the Ombudsman in this process.

The biggest message I wanted to give the legislative committee was that, when you set up rights such as those under the Freedom of Information and Protection of Privacy Act, the Ombudsman Act, and arguably the legislation pertaining to the Provincial Auditor, it is important not only that these things are effective but that they are seen to be effective. Anybody with knowledge and insight as to the Ombudsman process in this province knows it is very effective. I believe it is the most effective one in the world because of the legislative relationship, the committee relationship and the historical ability of this committee to have its recommendations adopted by the House.

Maybe that is the answer. I am thinking out loud now. Maybe the Ombudsman process is too darn effective and may cause some people difficulty if they apply that process to another one. I do not know. I guess, from my point of view, it is difficult for an outsider to see why you do not create the same process for this commissioner as you do for the Ombudsman.

In my mind, the question of which committee deals with it is secondary. It is logical, practical and efficient for this committee to deal with it for all the reasons that you and Mr. Philip gave, but it is not etched in stone, nor should it be. Fundamentally, given some assistance and a little experience, any of your colleagues on any other committee can carry on in this way. The foremost issue is to give the parliamentary commissioner, and through him, the public, the same privileges. I guess that discussion will be carried on when you next meet with that committee, whenever that will be.

Mr. Shymko: I want to ask the Ombudsman how comfortable he would be in commenting on exactly what Mr. Philip mentioned, the uniqueness of the situation in terms of the relationship, statute-wise, between you and the Ontario Human Rights Commission, the Ontario Labour Relations Board and what is happening here with the office of the commissioner.

Dr. Hill: I have a number of private views, Mr. Shymko, on that legislation.

Mr. Shynko: So you would not be comfortable with it.

Dr. Hill: They are numerous. I do not want to give them off the cuff. I would not be comfortable discussing that at this point.

Mr. Shynko: I just wondered, since Mr. Philip and I will be appearing before the committee to conclude our comments, whether we are right in the assumptions Mr. Philip is making, that no other body would fit in that category. I refer to someone's remarks that someone on your staff was shaking his head. Is it fair to assume that this is an unusual--I just wondered, at least as a factual piece of information.

Mr. Zacks: The public complaints commissioner is exempted from the jurisdiction of the Ombudsman, as are the review boards under that legislation. I have forgotten the proper name of the legislation.

Mr. Shynko: The public and the police--

Mr. Zacks: The complaint-handling process of the Metropolitan Toronto Police is specifically exempted.

Mr. Shynko: That is the only public body that is exempted?

Mr. Zacks: That is right.

Mr. Shynko: I wonder why there is such a unique aspect for that office.

Mr. Zacks: I have never been taken into the confidence of the former Attorney General as to why he exempted it. We were never informed of the exemption; it just came into the bill and we saw it. I had no discussion with him.

Mr. Shynko: If we are going to proceed with that approach, perhaps the police public complaints commissioner should be included.

Mr. Philip: I do not know whether they are going to be reading Hansard, but I do not want to make some of their arguments for them. I do not think it is legitimate to argue that because a sin is committed elsewhere, it would not necessarily hold up in court, that somebody could take either of them under section 15 of the charter. If you look at the history of it, the police complaints commissioner of Metropolitan Toronto is a unique historical situation. I made this point with the former Attorney General and I think he agreed with me.

In North America there were tremendous problems in trying to implement police complaints bureaus, and he was under those kinds of pressures. Fortunately, the chief of police was about to retire and did not feel the same kind of pressures his successor might have felt. He was in a unique position to do a number of things that we know were not under the act. The commissioner was able to do a number of things and happened to be an exceptional person, but in fact he had no authority under the act.

They were partly able to do it because Roy McMurtry managed a very successful power play and became both Solicitor General and Attorney General. Nobody from the Solicitor General's office was able to shoot at the Attorney General's office and the police complaints commissioner.

Some day, I would love to write a book about it because it is an interesting study. There is a whole series of dynamics that I covered in a fairly long speech at the time the new act was brought in, and he did make some amendments. I suggested the Attorney General was probably acting contrary to law or contrary to his own act, and so was everybody else. They were all winking and saying: "Are we not doing a great job? Since nobody is challenging us, we are getting away with it. Let us not rock the boat."

If the police association or anybody had started to challenge it, we might have had a different situation. There is a whole series of dynamics that make the thing quite different. To his credit, the former Attorney General probably got as much as he could at the time. If he had put more in the bill, he would have had a riot on his hands.

Mr. Shynko: I understand the police public complaints commissioner is not a provincial body. It cannot equated with the Ontario Human Rights Commission or the Ontario Labour Relations Board. It deals exclusively with the Metropolitan Toronto area and is exclusively for that region of the province.

Mr. Zacks: That is right, but because of its structure I would have no difficulty concluding it is a government organization, but for that exemption in the legislation,.

Mr. Philip: It was set up as a pilot project.

Mr. Shynko: Still, it is limited in its scope to its geographic location.

Mr. Zacks: It is limited to Metropolitan Toronto for the time being.

Mr. Chairman: Is there any further discussion or business? If not, we will adjourn until two weeks from today at 12 noon.

The meeting adjourned at 11:10 a.m.

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1985-86
WEDNESDAY, AUGUST 27, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Hennessy, M. (Fort William PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Ashe, G. L. (Durham West PC) for Mr. Shymko

Clerk: Decker, T.

Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman of Ontario

Meslin, E., Executive Director

Mills, A., Controller

Morrison, G., Director of Investigations

Savage, H., Director of Regional Services

Pelletier, A., Native Program Officer

From the Sioux Lookout Community Legal Clinic:

Cameron, I. J., Staff Lawyer



ALL PARTY STANDING COMMITTEE

RE: THE OMBUDSMAN

HELD: Nishnabe-Gemik Friendship Centre
Sioux Lookout, Ontario, on
Wednesday, August 27, 1986

BEFORE:

Mr. Ron McNeil	-	Chairman
Mr. Patrick Hayes	-	Member
Mr. Allen McLean	-	Member
Mr. Mickey Hennessey	-	Member
Mr. George Ashe	-	Member
Mr. Howard Sheppard	-	Member
Mr. Ed Philip	-	Member
Mr. John Bell	-	Legal Advisor

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185 Richmond Street West,
Toronto, Ontario
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Per: S. Shambleau, C.V.R.



1 ---Upon commencing at 9:30 a.m.

2 THE CHAIRMAN: Ladies and gentlemen,
3 I think that we will begin our meeting. First of
4 all I would like to express the Committee's thanks
5 to Shirley O'Connor, Executive Director, who has
6 made the necessary arrangements here at the
7 Friendship Centre. Her Assistant Director is
8 Debbie Herbaniak and if you haven't met Debbie
9 you will meet her later on today. They have made
10 all the necessary arrangements and have done an
11 excellent job.

12 For our guests I would like to
13 mention this is an All Party Standing Committee of
14 the Legislature composed of members of the three
15 parties represented in the Legislature and I would
16 like to introduce the members who are present here
17 today. Mr. Patrick Hayes who is from Essex North.
18 Mr. Allen McLean who is from Simcoe East. Mr. Mickey
19 Hennessey who is from Fort William, Thunder Bay.
20 George Ashe Durham West. Howard Sheppard from
21 Northumberland and Ed Philip from Etobicoke.

22 Unfortunately the Liberals were
23 involved with a very important meeting I guess in
24 Toronto last night and were unable to attend the
25 meeting today.



1 This Committee has visited Port
2 Severn, Big Trout Lake and now Sioux Lookout. This
3 visit and trip parallels one which was taken in
4 1984 to Moosonee, Moose Factory, Cochrane and other
5 centres in north-eastern Ontario. Every year the
6 Standing Committee reviews the annual report of this
7 Ombudsman and this review has been taking place in
8 Toronto. This year the Committee wanted to meet
9 the people of the North and bring the Ombudsman's
10 Standing Committee to you. This is the first time
11 the Committee has had a meeting outside Queen's Park
12 as part of its annual review.

13 This meeting provides a unique
14 opportunity for you to observe the Ombudsman
15 process in action and to witness the relationship
16 between the Legislative Assembly and the Ombudsman.
17 I would like to introduce the members of the
18 Standing Committee staff.

19 We have right on my immediate right,
20 Mr. Todd Decker who is the Clerk of our Committee.
21 Next to Todd is Kathy Evans who is a lawyer and
22 who is a research officer with the Legislative
23 Research Service. On my left is John Bell who is
24 our legal advisor.

25 Now I am going to call on John Bell



1 to say a few words.

2 MR. BELL: Thank you, Mr. Chairman.

3 For the benefit of those who are in attendance
4 this morning again, for the record, let me elaborate
5 just briefly on a few points which have been
6 raised and specifically more about who we are and
7 why we are here.

8 This Committee is the successor of the
9 select committee on the Ombudsman that was struck
10 by the Legislature in 1976. As a result of an
11 impasse, if you will, between the then Ombudsman
12 Arthur Maloney and the government of the day in
13 respect of a certain land assembly matter in
14 Southern Ontario the Committee was created
15 to serve as, if you will, a liaison between the
16 Ombudsman and the Legislature.

17 Although the purpose of its
18 creation was specific, it very soon expanded because
19 of the need for an ongoing and continuous liaison
20 between the Ombudsman and the Legislative Assembly
21 and it has since 1976 continued. It was, if you will,
22 converted to a Standing Committee two years ago. It
23 is a distinction without a difference except it now
24 permits the Committee to sit when the House is in
25 session without formal approval of the Legislature.



1 The Committee's terms of reference are
2 three-fold and have been for a number of years. First
3 because by the Ombudsman's Act he must report on
4 his annual affairs to the Assembly at least once
5 a year, the Committee as an agent of the Legislature
6 reviews those annual reports and deals with such
7 matters as are necessary and appropriate and reports
8 on same to the Legislature with any recommendations
9 that it believes to be appropriate and as you will
10 see later this morning that function will serve
11 primarily as the focal point of the meeting today.

12 There are certain matters in the
13 Ombudsman's report that he wishes to draw specifically
14 to the Committee's attention and we wish to discuss
15 specifically with him. That singly is probably the
16 most important part of the Committee's operations
17 and specifically for this reason.

18 Those of you who are familiar
19 with the Ombudsman's function will know that he
20 does not have any specific authority to require
21 or force the government, governmental organizations
22 to do anything. He may make a recommendation and
23 the governmental organization is not required to
24 implement it. The Ombudsman's ability, if you will,
25 or opportunity to have any such matter implemented



1 is through this Committee and through this Committee
2 to the Legislature and by that I mean he has, the
3 office has since its inception in annual reports
4 raised specific cases wherein recommendations he
5 has made have been denied by the governmental
6 organization. When that happens, the Committee
7 considers both sides of the issue in those reports,
8 i.e., the Ombudsman's position and the reasons for
9 his recommendation and the governmental organization's
10 position and the reasons for its refusal to implement
11 it.

12 Then it, The Committee, reports to
13 the Legislature and quite bluntly on which of the
14 two positions is to be preferred. I think
15 historians or those who have examined the process
16 of the Ombudsmanship in Ontario will agree that it
17 has been the Ombudsman's historical ability to have
18 a good number of his recommendations supported by the
19 Committee, through the Committee of the Legislature.
20 It has a significant impact on his effectiveness in
21 Ontario. I believe it is the only jurisdiction
22 in Canada wherein an Ombudsman may turn to the
23 Assembly, a Committee in such an effective way.
24 That is one of his most important functions.

25 His other two terms of reference are



1 to enact rules for the Ombudsman's guidance
2 which may be necessary on a certain topic. The
3 Committee has exercised that jurisdiction very
4 sparingly. It has not implemented any I believe
5 since 1979. The reason it hasn't is because it
6 has not been considered necessary. There has been
7 and continues to be developed an excellent working
8 relationship between the Ombudsman's staff and the
9 Legislature in terms of how things ought to or
10 should be done.

11 The last function, I said the
12 first was the most important, the Ombudsman may
13 believe the last is the most important, it receives
14 and considers his estimates on an annual basis
15 and so reports to the Legislature.

16 The Committee generally meets
17 twice a year, once around this time and again in
18 January or February. The reason if you will behind
19 the Committee's decision to travel to the north,
20 it has long endorsed the Ombudsman's policy and
21 this does not only apply to Dr. Hill but it applies
22 to the first Ombudsman, Arthur Maloney, Don Moran
23 after him and others who have filled the role on
24 an interim basis in the interim.

25 There has been a long policy of the



1 office of the Ombudsman to take the office and
2 the functions to the people of Ontario in all
3 corners of Ontario. The Committee endorses that.
4 The Committee also believes that it is important
5 and appropriate when the occasion arises to take
6 its function to other parts of Ontario, not just
7 to Toronto. I think that is one of the reasons
8 why the Committee is here and it is also a
9 continuation of its functioning on a Northern
10 Ontario trip which started two years ago under
11 Chairman Underhill.

12 That is an overview. What are
13 we going to do today? Well, we are going to
14 try to accomplish five things. We have already
15 accomplished one and that is the opening remarks.
16 Dr. Hill has as is his custom on these occasions
17 some opening remarks to make to the Committee
18 in respect of his annual report, i.e., his
19 activities in the last 12 months. We will be
20 hearing from him next.

21 After that is completed the
22 Committee will be discussing certain specific
23 matters arising out of his annual report with
24 him, most of which I believe he will touch upon
25 in his opening statements in the form of an



1 | elaboration why things were done and what the
2 | results were, et cetera.

3 | We will then discuss with the
4 | Ombudsman certain observations and comments that
5 | the Committee made in its eleventh report to the
6 | Legislature after its last trip to the north and
7 | those comments are really in two parts.

8 | One, the subject of the need for
9 | the Ombudsman to have a presence in the north and
10 | not only in communities like Sioux Lookout or
11 | North Bay or Kenora, Kapuskasing, but far northern
12 | native communities which are by their geographic
13 | locations remote and relative inaccessible.

14 | The other aspect of the Committee's
15 | comments have to do with the functioning if you
16 | will of the Ombudsman's operation in the north,
17 | whether and to what extent all of his functions
18 | should be performed in the north in respect of
19 | complaint handling or whether it is necessary and
20 | appropriate for some things to be done from the
21 | Toronto head office; and when we conclude that
22 | part of the discussion the Committee will want
23 | to discuss with Dr. Hill just what has happened
24 | in the last two days in respect to the business
25 | in the north, what comments and observations



1 Committee members may have and likewise, the
2 group.

3 So with that relatively but
4 usually long-winded introduction, Dr. Hill, do
5 you have an opening statement, if it is convenient
6 to you? Before you do, sir, I think for the
7 record and for the people in attendance would
8 you introduce the members of your staff that
9 are in attendance with you today so that we know
10 them?

11 DR. HILL: I would be pleased to.
12 The person handing out the comments in the pink
13 dress is Mrs. Eleanor Meslin, Executive Director
14 of the office. To my right is Mr. Harvey Savage,
15 the Director of Regional Services, Regional
16 Director for the office, and behind me is Allan
17 Mills, Comptroller and Gale Morrison, Director of
18 Investigations and Mr. Allan Pelletier who has stepped
19 out. You have all met Allan Pelletier and seen
20 him around for the last three or four days.
21 He is the Co-ordinator of Native Programs and
22 works for the office. That is my staff.

23 Mr. Chairman, shall I proceed?

24 THE CHAIRMAN: Yes, Dr. Hill.

25 DR. HILL: I have handed out my



1 statement for today. There will be another more
2 detailed statement tomorrow in Thunder Bay.

3 Members of the Standing Committee
4 and invited guests of the Sioux Lookout Community,
5 I welcome the opportunity to appear with you today,
6 especially in these historic circumstances. This
7 is the first occasion that the Ombudsman has
8 appeared before the members of the Standing
9 Committee together in Northern Ontario. I think
10 you have chosen a very appropriate setting to pursue
11 your work of assisting my office to fulfill our
12 mandate.

13 My report to you as I mentioned
14 will be delivered in two sections. One here in
15 Sioux Lookout and the balance tomorrow. Tomorrow
16 I will be dealing with the areas of the organization
17 and the operation of the office, statistical
18 analysis, systemic problems. Those will be dealt
19 with in a longer paper tomorrow.

20 I will outline our progress in
21 making the services of the Ombudsman more accessible
22 throughout Ontario. I will provide an update on
23 matters outstanding from my annual report, including
24 the progress of a number of special projects and
25 the status of a number of unresolved issues. I



1 will discuss the status of those cases where the
2 governmental organization refused to implement my
3 recommendations. I will report on the management
4 improvements we have introduced to make our operation
5 more effective and efficient. I will highlight some
6 of the work in progress by our various investigative
7 units and finally, I will apprise you of my
8 prospective and proposed initiatives for the
9 future.

10 As I have said in the past, I believe
11 our meetings are vital for the continuing success
12 of this office as we continue to foster a very
13 open and mutually helpful relationship between us.

14 As you know, I like to think that
15 mine is an open administration. I will endeavour to
16 give you whatever information and assistance you may
17 request. Your comments, your criticisms, your
18 guidance will continue to be welcomed and valued
19 during my tenure as Ombudsman.

20 Much of what I say has been stated
21 in my recent annual report. However, I believe it
22 is important that it become part of the record of
23 this Committee.

24 On the topic of recommendation denied
25 cases, I am very pleased to report that for the first



1 time in the history of this office there are no
2 cases outstanding from the previous fiscal year
3 where the governmental organization refused to
4 implement the Ombudsman's recommendation.
5 Subsequent to the publishing of my recent
6 annual report all four recommendation denied cases
7 were equitably resolved to my satisfaction. I
8 attribute this result to commendable co-operation
9 on the part of the governmental organizations
10 concerned and to our own efforts to establish a
11 mediative and conciliative atmosphere in our
12 working relationship with the agencies and ministries
13 involved.

14 I firmly believe that most
15 governmental organizations have a respect for the
16 office of the Ombudsman and a genuine desire to
17 assist us.

18 Achieving the desired disposition
19 without sacrificing the issues involved in all four
20 of the cases has strengthened my belief that media-
21 tion and conciliation are valid, appropriate and
22 invaluable techniques for complaint resolution.

23 During the past fiscal year regional
24 services were a special priority for this office.

25 In my last report to the Committee, I



1 mentioned several concepts to strengthen my
2 office's ability to deliver services to all
3 parts of Ontario. A problem your Committee has
4 also addressed several times. I would like to
5 report now on the progress we have tried to make. When I
6 became Ombudsman in 1984, regional services
7 consisted of offices in North Bay, Thunder Bay,
8 and Ottawa, as well as the private hearings
9 program throughout the province.

10 On review, I concluded that the
11 idea of regional offices was basically sound but
12 that private hearings, although helpful, were
13 not generating a significant number of jurisdictional
14 complaints to justify their costs.

15 I was also concerned that the services
16 of the Ombudsman were little known throughout the
17 province, especially by those who needed them the
18 most -- the indigent, the institutionalized,
19 and those disabled by cultural, physical, or social
20 barriers. It was apparent to me that public
21 education and outreach programs should have
22 primacy in my plans. It was also apparent that
23 fiscal realities in this period of constraint
24 precluded an expanded budget.

25 As a first step, I discontinued the



1 private hearings. With almost 1,150 cities, towns,
2 and small communities in Ontario, simple logistics
3 told me that reaching them with any degree of
4 substantive, regular service was impossible. The
5 private hearings also lacked the credibility that
6 a permanent presence of an Ombudsman representative
7 provides.

8 As I reported to the Standing Committee
9 last year, I opened District Offices in Kenora and
10 Timmins as store-front operations staffed by one
11 full-time Ombudsman representative with secretarial
12 support. These street level offices -- highly
13 visible and accessible -- were so successful that
14 I have moved our Thunder Bay and North Bay offices
15 from downtown highrises to centrally located less
16 cost store-front facilities.

17 I certainly don't believe that an
18 Ombudsman's office should be located on the 17th
19 floor or 12th or 15th floor of some highrise.

20 The Ottawa office will be moved
21 as well when its lease expires. To date, the
22 store-fronts are an integral part of my program of
23 accessibility. Inquiries and case loads have
24 increased substantially, due, it seems, to the
25 simple expedient of going to where people can see



1 and reach you. For example, our Thunder Bay office
2 has shown an increase in contacts of 145 per cent
3 (in absolute terms from 188 to 461 cases), from
4 January - June of 1986 after the move when
5 compared with the same period in 1985.

6 However, it is simply cost prohibitive
7 to continue opening offices wherever a need for
8 services exists, especially in a province the size
9 of Ontario.

10 Last year, I explored with this
11 Committee a concept I thought would meet my desire
12 to have this office within the reach of all
13 Ontarians and meet the necessity to be frugal with
14 the taxpayers' dollars. This was the "stringer"
15 concept, a newspaper term -- part-time employment
16 of field officers who would serve a given area
17 three days a week. The field officer works out of
18 his/her home with a separate phone and an answering
19 service. Interviews are arranged at mutually
20 convenient locations and times. Secretarial and
21 support functions are provided by our Toronto office.

22 I am delighted to report to the
23 Committee that with the help and participation of
24 area MPPs, I have announced the appointment of
25 field officers, part-time, in Windsor, London,



1 and Sault Ste. Marie.

2 You will be interested to know
3 that the total costs incurred in placing each
4 field officer averaged approximately \$6,000. This
5 included all costs of publicizing the initiatives,
6 holding a community meeting and reception, all
7 travelling costs, recruiting, training and
8 establishing the officers in their locations.

9 Beyond providing a complaint intake
10 and referral function, it is the field officer's
11 responsibility to develop a proactive profile for
12 the office through active educational involvement
13 with community-based organizations in the area as
14 well as local government. When we recruit for
15 field officers we are looking for knowledgeable
16 insiders -- local representatives who are aware
17 of local issues, and local resources -- with
18 excellent community relationships and credibility.

19 The positive effects of having this
20 type of Ombudsman representation can again be
21 seen in our preliminary statistics -- for instance
22 a 203 per cent increase in contacts with our office
23 in the Windsor area (in absolute numbers and the
24 most important terms it has grown from 65 to 197),
25 after the appointment of a field officer in



1 March, 1986.

2 In the London area comparative
3 statistics show an increase from 40 to 51 contacts
4 in a two month period.

5 The placing of the Sault Ste. Marie
6 field officer is too recent for statistical compari-
7 sons but I really anticipate similar results.

8 Store fronts and part-time field
9 officers are two parts of a regionalization plan
10 being implemented by my new Director of Regional
11 Services -- Mr. Harvey Savage who is sitting on
12 my right. This plan grew out of my determination to
13 increase our accessibility in a manner that was
14 most cost efficient.

15 My program of regionalization is
16 community based and oriented to reach the
17 multitude of groups and organizations throughout
18 the province, to lend them a listening ear,
19 and to give them a voice. I am convinced that the
20 array of problems uncovered by this approach would
21 not otherwise reach the Ombudsman.

22 By being only reactive, by merely
23 waiting for people to come with problems, even with
24 the widest possible mass publicity, many Ontarians
25 would not seek the Ombudsman's services because



1 many would still not understand our jurisdiction,
2 our powers, our role, and how these might become
3 part of their personal problem-solving processes.

4 I will briefly describe the inte-
5 grated regionalization plan. The program is a
6 combination of regional, district, and field offices.

7 We presently have two regional offices:
8 one in Thunder Bay covering Northwestern Ontario
9 and one in North Bay, covering Northeastern Ontario.

10 The regional centres include a
11 satellite district office located in areas with
12 high numbers of native residents. The Kenora
13 district office which reports to Thunder Bay, serves
14 a number of towns and rural centres as well as about
15 40 reserves in the Treaty 3 and Treaty 9 area.
16 The Timmins District Office, reporting to North Bay,
17 is near the James Bay district of native communities.
18 Our Timmins district officer, Mary Lou Iahtail,
19 a Cree native, is fluent in Cree, Oji-Cree and
20 French which is a great advantage for servicing the
21 residents of that large area.

22 The Ottawa district office reports to
23 Toronto and services a number of rural communities
24 in the Ottawa Valley and Eastern Ontario as well
25 as the capital.



1 The three field officers I
2 mentioned complement the activities of these other
3 satellites, especially in Southwestern and South
4 Central Ontario, heavily populated but, until their
5 appointments, unserved by local Ombudsman
6 representatives.

7 For all of my regional staff members
8 the approach is the same -- development of ongoing
9 community outreach programs through the careful
10 nurturing of key "listening post" contacts among
11 community groups and local government units.

12 A "listening post" is a person
13 identified as a central figure in a particular
14 community.

15 The "community" could be a Native
16 council, district labour council, injured workers'
17 organization, womens' shelter, or social planning
18 council, as an example. My representative will
19 focus on one particular person and develop a
20 continuing relationship for the purposes of referrals,
21 complaints, and identification of systemic issues
22 for his or her group. I am preparing a binder
23 which each "listening post" person will have on
24 hand as a reference and referral resource. It will,
25 of course, include the riding office addresses and



1 phone numbers of the elected members of the provincial
2 Parliament.

3 My Native Programs Officer, Allan
4 Pelletier, whom I mentioned last year, and
5 with whom you are all now well
6 acquainted, has undertaken an extensive series of
7 consultations with native leaders and communities
8 throughout Ontario to define issues in these
9 communities to which the Ombudsman's office is
10 relevant. He has personally visited more than 200
11 Aboriginal groups across Ontario. The results have
12 been most encouraging. Indeed it was Allan's
13 organizational effectiveness that gave us successful
14 meetings in Port Severn and Big Trout Lake.

15 The Ombudsman is being seen, more and
16 more, by Ontario's Aboriginal peoples as a legitimate
17 part of their problem-solving process in areas
18 under my jurisdiction. For example, the following
19 case, and I think it is good every now and then
20 to give a case example, illustrates how the Native
21 program helped resolve an issue of great importance
22 to Native people, the issue of freedom of religion,
23 and no issue could be more important than freedom
24 of religion in a democratic society.

25 Traditional Native spiritual
practices, specifically, access to Native spiritual



1 leaders and opportunities to participate in communal
2 worship and use sacred plants, became an issue for
3 this office in 1985 as a result of our outreach
4 work with Native inmates in provincial
5 institutions. My Native Programs Officer consulted
6 with the Ontario Native Council on Justice and
7 together we found that the policy of the Ministry
8 of Correctional Services with respect to inmate
9 access to Native spiritual services fell far
10 short of the policy in use in the federal government
11 correctional system.

12 The Native Council on Justice
13 initiated discussions with Ministry officials
14 about this issue and during that period our office
15 received a complaint from a Native inmate regarding
16 inability to practice Native spirituality. Our
17 office then joined the discussion hoping to act as a
18 catalyst without the necessity of launching a
19 formal investigation. I am pleased to report to you
20 that as a result of that discussion the Ministry
21 implemented a policy change which is now part of
22 its policy and procedures manual. The new policy
23 is virtually identical to the federal guideline.

24 I intend to use incidentally
25 every bit of influence that I have with my staff



1 to assist the Native people of this great province
2 in seeking justice and equality of opportunity.
3 That is a very high priority with me.

4 Since the outreach approach to
5 regionalization is relatively new, it would be
6 premature for me to evaluate its overall success.

7 However, I can report some very
8 encouraging signs. The number of complaints handled
9 by our various offices has significantly increased.
10 More importantly perhaps, our approach is turning
11 up a number of interesting issues. These range
12 from public housing practices in northern communities,
13 difficulties in recovering travel expenses for
14 remote residents who must obtain medical treatment out
15 of province, to the problems faced by the develop-
16 mentally handicapped at a variety of provincial
17 institutions.

18 Also, the cost of our regionalization
19 program has proved to be manageable. As I mentioned
20 earlier, one of the major problems confronting all of
21 us is how to do more with less.

22 In the days when this office
23 was founded by the Legislature, the potential size
24 of the Ombudsman's office could only be conjectured.
25 We were meant to be small - an Ombudsman's office



1 as a bloated bureaucracy would indeed be an irony.
2 But, as we were more successful at establishing
3 our services as legitimate and useful to the public,
4 to government, to the elected representatives of the
5 province -- our workload grew, while our commitment
6 to fiscal constraint remained constant.

7 We have all brought personal attitudes
8 to the job to help us cope with increasing demands
9 on our service and shrinking resources to meet them.

10 My father, a Methodist Preacher,
11 helped form my attitude many years ago when he
12 taught me this bit of doggerel:

13 Use it up, wear it out, make it
14 do, do without.

15 This advice served me well when the
16 topic of my regionalization program was raised
17 before the Board of Internal Economy. I did not ask
18 for an increase to our existing budget, not one
19 nickel. I did, however, outline the cost efficiencies
20 achieved internally by our office to finance the
21 experiment.

22 I simply chopped or streamlined
23 certain areas in order to promote better service
24 and better program delivery.

25 Inevitably the most eloquent argument



1 for my regionalization experiment will be its
2 success or failure.

3 My legacy as Ombudsman will be,
4 I hope, that every Ontarian who needs this service
5 will be able to reach it.

6 In addition to a strengthened regional
7 services program, I and my staff have continued our
8 vigorous program of education and outreach under the
9 direction of my Communications and Public
10 Education Directorate.

11 Last year through the vehicle of a
12 co-ordinated speaker's roster, our staff, including
13 investigators, researchers and information officers
14 spoke to about 20,000 people in 144 communities
15 from Winisk to Windsor, appeared on 52 radio
16 and television shows, and distributed 90,000 pieces
17 of literature about the office of the Ombudsman
18 and how the public could use it. And we are still
19 able to communicate with the public in 22 or more
20 different languages including Cree and Ojibway.

21 I have recorded public service
22 announcements for airing on 88 radio stations around
23 the province, ensuring that the public knows
24 about each regional, district, or field office. We
25 have also undertaken an educational program in the



1 schools and provided school boards, many of them,
2 with resource kits regarding the Ombudsman.

3 I am pleased to report that this
4 program has led to a more sophisticated under-
5 standing of the Ombudsman's office by ordinary
6 people and I hope to be able to report next year, that
7 non-jurisdictional inquiries are down and juris-
8 dictional inquiries are up as a result. All of
9 this, of course, takes some time.

10 We will strive to turn away no-one who
11 needs helps with a problem, I am attempting to
12 conserve my resources for the many thousands
13 of jurisdictional complaints and systemic issues
14 which arise every year.

15 I have also undertaken an education
16 program, for, among others, community legal clinic
17 workers across Ontario, Native leaders and
18 Ministry of Correctional Services personnel, and
19 adult protective service workers. It is key to my
20 concept of regionalization and to the effective
21 functioning of this office that front-line workers
22 understand how this office can enhance their efforts
23 with their client groups.

24 It is also important that the
25 public knows what an Ombudsman is all about and how



1 he can help them. This can only be done through
2 a well co-ordinated regional program that is
3 with a strong public educational back-up and I
4 stress that the two things must be done together,
5 strong regional programs with a powerful public edu-
6 cational back-up. That is the only way the
7 public will ever understand what we are trying
8 to do.

9 Mr. Chairman, this concludes
10 the first part of my remarks and now I will be
11 pleased to receive any comments or questions
12 you may have regarding our regional public
13 education program, or whatever. Thank you,
14 Mr. Chairman.

15 THE CHAIRMAN: Any comments or
16 questions? Mr. Philip?

17 MR. PHILIP: Dr. Hill, on page
18 8 you refer to your outreach program in educating
19 community groups. You refer similarly on page
20 7 to that program and you go on then in the report
21 to talk about the problem of providing services
22 at an increasing cost.

23 One of the more effective things
24 of the program that originated in your office
25 was later carried on through the efforts of



1 Mickey Kaplan and through another government
2 office was the training of people in the field so
3 that they could have the kind of expertise that
4 your people have gained as lawyers and para-
5 legal people in handling such things as workers'
6 compensation which is often quite confusing to
7 trade unions, shop stewards, to community legal aid
8 people and to organizations.

9 I am wondering while you have here
10 a fairly effective advancement in the way of
11 informing community groups about the services of
12 your office, if there are plans to move in the
13 direction of training the people who are on the
14 ground to do at least those stages of citizen
15 advocacy work effectively so that perhaps they
16 don't have to reach your stage where appeals
17 are lost at lower levels; workers' compensation
18 or community social services and so forth.

19 DR. HILL: You are referring
20 to internal training or community training, which
21 one?

22 MR. PHILIP: I am referring to the
23 training of community workers in the same way as
24 you have done staff training for your own people
25 so that those people that are working on the front



1 line community groups can have some of the
2 expertise that your people have and that they are
3 used to offset the second or third level of
4 appeals so the cases can be won lower down so you
5 won't get the cases in the long run.

6 DR. HILL: We haven't done any
7 public advocacy training. I consider that not the
8 greatest priority at this point. What we have
9 done, however, is a number of programs, clinics,
10 conferences with community groups in which we
11 spell out definitively what we are trying to do,
12 how we are trying to do it, the kind of services
13 we offer, answer a variety of questions from them
14 and we have done this in a number of places.
15 We are doing it again in October with a major
16 conference in Ottawa with community groups,
17 community clinics, with advocacy groups at
18 which they get a chance to really pour the
19 questions on to us and find out how we do things,
20 how we work on workers' compensation and we have
21 done this I think three or four times with
22 community groups internally.

23 I just want to add, you didn't
24 ask that question, internally you have a major
25 conference where the regional people are coming in



1 again to be trained in certain techniques in the
2 office. I think Harvey might want to say a
3 bit about the kind of training we are doing
4 formally and informally with the community groups,
5 not advocacy training, but straight educational
6 training.

7 MR. SAVAGE: There are a few
8 additions. One was referred to in the remarks
9 earlier of the idea of a listening post and this
10 idea has developed some resource material sort of
11 like manuals and in the manuals, included in the
12 materials are information on a number of the
13 various kinds of legislation like social benefits,
14 workers' compensation, appeal provisions and
15 so on.

16 The purpose here is two-fold. One
17 is your purpose, educating key community people,
18 key community leaders in how to more or less
19 process appeals themselves as you say, walk them
20 through it basically, so they can do a lot of this
21 work before they get to us.

22 The other purpose is to raise
23 the consciousness really of key people in the
24 community to what kinds of issues they can
25 refer to us at the end of this process. So for



1 instance we would work with organizations such
2 as the mentally handicapped, local associations,
3 various disability groups, native bands, like
4 band councils, labour councils we are starting
5 to work with and trying to identify in each community
6 key organizations and key people in those key
7 organizations and we are going to start
8 implementing these listening post kits probably
9 in the early fall so I think that may cover
10 part of your question.

11 The other part, there are two
12 more initiatives. One is going on this week
13 in Sudbury where for the first time our office,
14 almost a pilot project, our area manager, Eric
15 Moody in North Bay is conducting a seminar for a
16 number of constituency riding systems in that
17 area from Timmins, Sudbury, North Bay, Kapuskasing,
18 that whole area, Sudbury and he has put together
19 a two-day workshop partly in legislative appeal
20 mechanisms, partly the role and function of our
21 office, partly how our two organizations can work
22 closely together, refer and cross-refer. If it
23 works well we may do it in other parts of the
24 province and other constituency offices.

25 The last part is utilizing our



1 public education program as Dr. Hill referred
2 to earlier to work more effectively during this
3 coming year with organizations such as COW workers,
4 clinic workers for legal clinics and so on to
5 familiarize them once again in various kinds of
6 ways, avenues to use before they reach our office.

7 MR. PHILIP: I think that that is
8 the direction that I would urge you to go. It is
9 unfortunate that I have seen a number of cases
10 which arrived in the Ombudsman's office that,
11 had they been handled effectively by shop stewards
12 or by somebody at the lower levels of appeal, they
13 wouldn't end up in your level 3 or level 4, whatever
14 level you happen to get in on depending on the
15 agency and if you are going to economize then the
16 route may be to train local people to represent
17 local people effectively so that you don't end up
18 with an appeal after an appeal after an appeal.

19 I had a question concerning
20 systemic problems. I don't want to sound like an
21 old song, but this has been my hobbyhorse and
22 I am pleased that you are the first Ombudsman
23 in Ontario that is coming to grips with the need
24 to identify systemic problems rather than simply sticking
25 your finger in the dike over and over again. You



1 refer in your comments to identifying one of the
2 systemic problems namely the problem of native
3 peoples' religion, freedom of religion in the
4 penal system. You then go on to be very general
5 about other problems such as housing and health.

6 I wonder if you have been able
7 to identify other systemic problems that you
8 are presently working on and if you had any
9 recommendations on those specific systemic problems
10 or patterns of problems that are happening in
11 certain jurisdictions?

12 DR. HILL: We will be discussing
13 this in greater detail tomorrow. I have a whole
14 section and Mrs. Meslin is going to talk about
15 some new initiatives for Ontario Housing. We
16 couldn't do a major study there. We have a number
17 of things we would like to tell you about what we
18 are trying to do there and at the same time another
19 systemic problem which we are attacking again
20 involving housing and a report will be issued in
21 late September on it is the housing problems of
22 native people in the Moosonee area, a report being
23 developed by Kathy McKay. We are working with
24 the Timmins housing authority and Mr. Greenspan,
25 Chairman of OHC are working with the Minister. We



1 have sent our staff several times to Moosonee and
2 to Timmins on this project and the study and
3 the report and the recommendations of the
4 Ombudsman regarding systemic problems of housing
5 in the Moosonee area will be ready in the fall.

6 So those are two areas that we are
7 attacking and tomorrow we will be prepared to tell
8 you again in my second section of my report to
9 you of a number of other areas systemic that we
10 are attacking.

11 MR. PHILIP: As I recall and I
12 was one of the members of the committee that went
13 on the northeastern trip, some of the housing
14 problems were less systemic than actual concrete
15 evasion of the government to exercise its
16 responsibility and provide adequate housing. I
17 wonder if it would be useful to review a couple of
18 those cases that you had just for the sake of
19 members of the committee and also for the people
20 here.

21 There was one case, as I recall,
22 of a walk-up third floor with people in wheelchairs
23 that were very disabled where it had been
24 condemned by the Fire Chief as being a fire hazard
25 on at least three occasions. Has anything been



1 done about that building?

2 DR. HILL: Gale...

3 MS MORRISON: The complaint
4 itself was concerning those particular people...

5 DR. HILL: Gale was the Director
6 of Investigations.

7 MS MORRISON: I don't think anything
8 specific has been done about upgrading it.

9 MR. PHILIP: Is that building
10 still in existence?

11 MS MORRISON: I can't answer that,
12 but I guess it is.

13 MR. PHILIP: Are the people in
14 wheelchairs and crutches still living on the third
15 floor?

16 MS MORRISON: No, I think that is
17 what our specific complaint addressed, the
18 difficulty, because it wasn't adequate housing
19 but disabled people, the specific complaint was
20 resolved. As far as I know the building is still
21 being used for housing.

22 MR. PHILIP: It is still being
23 used for housing for geared to income people so
24 the building could still go up in smoke and
25 instead of burning disabled people you would just



1 be burning poor people?

2 MS MORRISON: I haven't that
3 information as to whether it has been upgraded
4 or not.

5 DR. HILL: I think we have some
6 information.

7 MRS. MESLIN: I am looking through
8 the cases.

9 MR. PHILIP: I know the Fire Chief
10 was extremely concerned about it and he said it
11 was a fire trap and people shouldn't live in those
12 kind of conditions.

13 DR. HILL: We will see if we have
14 an update on that for you, Mr. Philip.

15 MR. PHILIP: In your outreach
16 program you mentioned you are operating 23 programs
17 but you didn't mention whether or not the outreach
18 in terms of showing your services are operating
19 in those 23 languages and I notice educational
20 material is talking about the Ombudsman's office
21 in Cree and another of Native -- new Canadian
22 languages, some European languages.

23 DR. HILL: Right.

24 MR. PHILIP: What programs are
25 you going to in terms of telling people about your



1 services in other languages other than simply
2 sending out material -- printing material.

3 DR. HILL: As far as I can recall
4 we have as I mentioned earlier a number of community
5 meetings with native organizations we have held.
6 I have met and spoken to a number of black organiza-
7 tions. I don't have my director of education with
8 me. I can't list all the other ethno-cultural
9 and other groups we have spoken to, been on panels
10 and seminars with, but there are a variety of them.
11 We have not taken on a project with any of those
12 particular groups but we have gone above and
13 beyond the stage of just handing them literature.
14 We have made ourselves available to them. We have
15 spoken to them and I could give you a list of the
16 kinds of groups we have spoken with and dealt with,
17 but I don't have it before me this morning.

18 MR. PHILIP: One of the criticisms
19 I had during the last set of estimates --
20 and I am afraid it is still a criticism and that
21 is when I look at your literature -- let me go
22 at it from this direction -- if I picked this up
23 I am immediately interested. There is a picture,
24 there is something that catches my attention and
25 I am not saying that just because the editor is



1 here, but it seems to me that some of your literature
2 while being informative tends to be geared to
3 an educational or sophistication level which is a
4 little different than the kind of level which
5 perhaps the B.C. Ombudsman is using to go out and
6 grab people's attention, the average guy on the
7 street, or indeed the average fairly educated
8 person who gets 10,000 pieces of paper across his
9 desk.

10 I am wondering if any efforts
11 have been made to get in some PR people or
12 journalists that will at least jazz up your
13 literature so that it grabs people's attention
14 and makes them want to read it. I know the B.C.
15 Ombudsman uses cartoons and a number of other
16 devices, the use of colour, that kind of thing.

17 With due respect your material, it
18 still seems a little dull in contrast to ...

19 DR. HILL: You may have to bear with
20 us just a little while on that criticism and I
21 will tell you why because we have just started.
22 As you can recall yourself the Ombudsman had no
23 literature of this nature before my tenure of the
24 kind or variety you are talking about. Since that
25 time we have put out a number of pieces.



1 Now granted they aren't perhaps
2 the very, very best but we are constantly working
3 on refining it. I brought in a new staff member
4 with a lot of ability to work in this particular
5 area, even in multi-lingual publications and we
6 are constantly trying to improve it but we have
7 been in it less than two years in terms of
8 publications. There was no publication, education
9 or publications directorate so it is really a
10 question of giving us time to refine it, make it
11 better. We are constantly trying to do that
12 very thing and it will just take a little time
13 to get it. I accept the criticism and I just
14 say give us a little more time to get it a bit
15 more sophisticated.

16 MR. PHILIP: Mr. Chairman, I
17 will let other members ask questions and I will
18 just end by saying I think your annual reports
19 and the format are so superior to anything that
20 has been done in the past that you should be
21 complimented on that and the language in which
22 you put it together and the way in which particularly
23 you are dealing with systemic problems and also
24 with examples of cases so that people can understand
25 what the particular administrative problem is. It is so



1 superior to anything that has happened under four
2 Ombudsmen that you have to be congratulated on it.

3 On that positive note I will
4 let some of the other members ...

5 MRS. MESLIN: Could I just address
6 Mr. Philip's question? What we are going to do is
7 check with Toronto on that case and we will be back
8 to you tomorrow, the case you mentioned.

9 MR. PHILIP: Why don't you get
10 back to me next week and save a phone call?

11 DR. HILL: We will do that.

12 MR. SHEPPARD: I am looking
13 forward to the second report tomorrow to see
14 what you add that you haven't already added today
15 to your comments. I am interested in pages 9 and
16 10. You have a new field officer in Sault Ste.
17 Marie and on page 10 you say you have done this
18 approximately for \$6,000. You said they worked
19 three days a week and would you explain how you
20 hired them for \$6,000 in each office?

21 DR. HILL: That is excluding salary.
22 That is putting the service together, getting it
23 set up and things of that nature, but the salary
24 would be about \$18,000. You have to add the salary
25 to that. It is a question I was talking to my staff



1 about, but that excluded salary. It covers all the
2 other costs of providing the service.

3 MR.ASHE: Just set up, it is
4 nothing to do with ongoing?

5 MR. SAVAGE: No.

6 MR. ASHE: I want to make that
7 clear.

8 MRS. MESLIN: Except the training, of
9 course.

10 MR. SHEPPARD: You said you didn't
11 ask for one extra nickel in your last budget and
12 you repeated that three times. Now you must have
13 been very efficient and I want you to explain just
14 how you had done that. Your overall field office
15 we are looking at \$16,000, how did you do this?
16 You tell us today you didn't ask for one extra
17 nickel and you moved in all these field offices.
18 You must really be getting frugal. I want to know
19 how you did it.

20 DR. HILL: Well, I will try to
21 tell you the best I can with an example. In the
22 past the Ombudsman had an executive assistant for
23 \$40,000, in that area...

24 MR. SHEPPARD: You have an executive
25 assistant now?



1 MRS. MESLIN: I beg your pardon?

2 DR. HILL: He also had an executive

3 director. Mrs. Meslin is the executive director

4 but the Ombudsman also had an executive assistant.

5 I don't need an executive assistant, a special

6 assistant, executive assistant, I chopped all those

7 positions out and the other thing I did --

8 Mrs. Meslin is dying to get in here, but I don't

9 need an executive assistant, everyone working for me is my

10 executive assistant. I don't need a special

11 executive assistant to carry my bags.

12 The other day I told my staff

13 particularly, Mrs. Meslin, not to fill certain

14 other positions after people left and when a number

15 of people left people asked me to fill their new

16 positions or bring another person and I wouldn't

17 do it. I cut out the unfilled positions. That

18 is another thing that saved money. Many people

19 shut off the lights before they went home. That

20 is another thing I did. I did a number of things.

21 Eleanor can tell you a number of others, but I

22 insisted on not filling certain positions that I

23 really didn't think are necessary. That saved

24 me a lot of money. Mr. Alan Mills, our Comptroller,

25 can you give any specifics but one of the big things



1 I did personally in my own office was to eliminate
2 the position of executive assistant.

3 MR. SHEPPARD: Mr. Chairman, just to
4 follow up you were talking about opening other
5 offices. What about the future, when the future
6 budget comes in? You also said in here you sent
7 out 90,000 pieces of literature?

8 DR. HILL: That is right.

9 MR. SHEPPARD: You have been on
10 52 radio shows and you hope to go to 88 radio
11 stations around the province. Are you contemplating
12 increasing your budget when you present the next
13 budget to the Ombudsman committee?

14 DR. HILL: Mr. Sheppard, it is
15 within the realm of possibility. Since I tried
16 to do a fairly decent job in the last year I might
17 ask for a small increase at some later date, but
18 it would be indeed small.

19 MR. SHEPPARD: Now to follow that
20 up, are you anticipating in the future hiring any
21 more help across the province with these extra offices
22 because I presume from what you have said in this
23 report that there is an increase of more problems
24 coming to your office and the field offices
25 across the province.



1 DR. HILL: I likely would have
2 to do that and at the same time I am doing that
3 I will internally continue to make certain that
4 we have a budget conscious operation wherever else I can
5 chop. I may have a few more ideas about that. I
6 will continue while I, on the other hand, ask for
7 the additional staff to serve the people in the
8 regions of this province that are not covered.

9 MR. SHEPPARD: Mr. Chairman, I
10 want to ask one more question if you let Dr. Hill
11 answer. When you advertise for these positions,
12 among the native people in northern Ontario, I
13 know that you interview these people and hire the
14 best people that you think will do the position. Do
15 you have a tendency to hire native people because
16 you have more complaints from native people for
17 claims?

18 DR. HILL: No. I wouldn't say that.
19 Anyone I hire has to be irrespective of race,
20 creed, colour, nationality, whether Indian, Black,
21 White or Yellow, there have to meet certain objective
22 basic criteria. You just have to do it. When I
23 came on staff I felt that -- when I became
24 Ombudsman I felt this province is now very multi-racial
25 multi-cultural, has a major native population. The



1 native people I must say indeed were ignoring our
2 operation or indeed didn't know about it. They
3 had no knowledge of what the operation was all
4 about and so I said to myself it is time that we find
5 some trained, efficient qualified without bending
6 the qualifications , native people for our staff.
7 What we did is I was told it was so hard to get,
8 we can't find native people or train them. I
9 don't believe that is so because my experience
10 when I was Chairman of the Human Rights Commission
11 is we know the aboriginal organizations, if you
12 know the native organizations and I did know them,
13 I perhaps know them better than any past Ombudsman under
14 Roberts and the other Premiers when I was asked
15 to do the development program I developed a
16 network of contacts with the native community and
17 so I informed them where no one had ever informed
18 them before that they were open to apply for
19 positions with the Ombudsman's office. They would
20 welcome them. We would be delighted to have their applica-
21 tions but they would have to compete with everyone
22 else. I put ads in native papers, for example
23 like I would put them in the Globe & Mail or any other
24 place and I said they will get a chance to compete
25 and through that mechanism we found as I sure enough



1 felt we would find some very excellently qualified
2 native people to work for us and they beat out
3 others in the competition. Certainly Allan Pelletier
4 did and certain Mary Lou Iahtail did.

5 MR. SHEPPARD: Thank you,
6 Mr. Chairman.

7 THE CHAIRMAN: Mr. McLean.

8 MR. McLEAN: Thank you, Mr. Chairman.
9 A couple of questions. Since your example in the
10 Thunder Bay office is downstairs at street level
11 your contacts have increased dramatically. In
12 some of those communities where you have contact
13 centres, do you have legal aid clinics, a
14 municipal office? I was interested in knowing
15 some of those contacts you are receiving. I mean
16 are you not creating a bureaucracy that is starting
17 at a level where it should be gone through the
18 normal process in a lot of these places whereby
19 you are coming in now and creating another office
20 where people can come and contact you with regard
21 to problems where they could come to the
22 constituency office and not get the answer they
23 like and go to the Ombudsman's office and go then
24 to the legal aid clinic? I would like your
25 comments with regard to the contacts that are being



1 made to your office.

2 DR. HILL: I will start the
3 answer and then I will let my regional director
4 who is working very much in the communities answer.

5 We have a conscious and very
6 definite program of working with the local MPP's.
7 In fact we get referrals on an average -- I will
8 be saying more about it tomorrow -- seven to ten
9 or more referrals from MPPs to assist them, to
10 work with them to handle complaints. We work as
11 a team.

12 I have instructed my staff wherever
13 they are working to be in constant touch with the
14 local member and see what we can do to help. We don't
15 have to create another bureaucracy and we are continuing
16 to deal with local groups on that basis. I think
17 Harvey could say a word to you about who we are
18 dealing with and why we are dealing with them.

19 MR. SAVAGE: Before I say that
20 I wanted to go back maybe to these comments of
21 Dr. Hill. As I said before, one of our major
22 objectives and it is indeed a concern is to
23 really work up a good relationship especially
24 between our office and the constituency offices
25 and legal clinics to avoid duplication.



1 So the idea is for everybody to
2 understand. That is the purpose of this seminar
3 in Sudbury next week to really try and share
4 information, show our respective roles and at what
5 stage the problem can be referred to us. I think
6 that is foremost and I think that is a concern.

7 The other is that we are trying
8 to reach out to a number of organizations and frankly
9 that is part of our outreach program. It has met
10 with a fair degree of success. I have travelled
11 around on business to some of these organizations
12 with our staff in the regions, groups who never
13 thought of what problems to take to the Ombudsman
14 and in various communities we saw this. Other
15 groups like that, where to send applications, again
16 had never heard of the Ombudsman before and helping
17 them to understand what our role is and they then
18 try to provide some of the issues they could raise
19 with us and that in part has resulted in the
20 increase in our case load. Not so much that we
21 are duplicating what should be going elsewhere
22 but simply because of the outreach connections
23 we have been making. The people are bringing
24 forward to us more problems than they had in the
25 past.



1 So I think it is those two sort
2 of approaches, first we have built up a really
3 good relationship with the constituency offices
4 and legal clinics and secondly is to try to inform
5 organizations who have never thought to use our
6 services before.

7 DR. HILL: Just one thing and
8 that is I have also instructed my staff to assist
9 these organizations to solve their own problems.
10 I think that is very critical. If you have a good
11 organization, a good service, I think it is
12 something Mr. Philip was talking about earlier,
13 you can show them by a good telephone call instead
14 of opening up a huge case and a huge file and
15 another huge bureaucracy but teach them how to
16 solve their own problems as best you can until it
17 gets to such a point where they have to have the
18 intervention of the Ombudsman and I think that
19 if they know it a lot of this stuff is handled
20 by phone without having to create a bureaucracy.

21 MR. McLEAN: So you really see
22 the role as a problem-solving process and the
23 role as the Ombudsman finally dealing with the
24 Ministry.

25 DR. HILL: Right.



1

2

MR. McLEAN: You say you want

3

to lend an ear and give them a voice, but aren't

4

there all other kinds of agencies in the communities

5

that can do the same kind of things before they

6

get to your final stage?

7

DR. HILL: We encourage them to

8

do so, yes, but then in the end it comes down to

9

a problem that is a governmental problem frequently

10

and the agency says "We have done all we can. Now

11

is the time for the Ombudsman to take this

12

complaint in hand." Only at that point do we

13

really want to step in. In the meantime if people

14

can solve their problems it is good for us.

15

MR. McLEAN: What I am saying is

16

duplication of services anyhow...

17

DR. HILL: Not if it is a government

18

complaint because they can't touch that and that

19

is the problem. They have to come to us then.

20

MR. McLEAN: Those are all my

21

questions at this time, Mr. Chairman.

22

THE CHAIRMAN: Mr. Philip.

23

MR. PHILIP: I don't see any

24

duplication. For one thing because of the Act

25

you can only intervene at a certain level and



1 secondly I have always found at my office if
2 we had a very complicated workers' compensation
3 case and wanted advice so that we could at least
4 win it or present the best case at a lower level
5 so that it wouldn't get to you, your office was
6 always there and very helpful.

7 I wanted to ask you a question on
8 that because there was a question I was discussing
9 with Ian Cameron earlier at the Sioux Lookout
10 community legal clinic and I was wondering if it
11 would be useful to have in the legislation a
12 discretion that at your discretion you could
13 intervene at a lower level. In other words, all
14 processes had not been gone through before it
15 comes to you and the instance would be where in
16 a community there might not be the expertise or
17 where simply some of the lower level agencies or
18 the agencies dealing with a case at a lower level
19 of appeal might feel that you could best handle
20 it. I am wondering if that kind of discretion
21 then should be built into the legislation or
22 whether it is better the way it is that they have
23 to go through all of the levels, lose at those
24 levels and then go to you for final appeal.

25 DR. HILL: That is a toughie. I



1 would really like to do whatever we can informally,
2 but to put it in the legislation I think a
3 lot of the major agencies and ministries of
4 government would say "Give us a chance to clean
5 up our own act first and give us an opportunity
6 to do our thing before you jump in there and take
7 over." That is the only thing that worries me
8 a bit about that approach because I think
9 Ministries, I have examples of a number of
10 ministries who would scream their head off
11 saying "We weren't given a chance. You stepped
12 right in because the legislation said you could
13 step right in and took it out of our hands." I
14 would be a little worried about that at this point.
15 I really would be worried about it.

16 MR. PHILIP: On the jurisdictional
17 issues of the trade unions and I have made
18 arrangements with some of them to meet with you here
19 and I am sure they probably did, expressed some
20 concern about your abilities to review labour
21 board decisions and they felt that if as a result
22 of that precedent that certain employers who
23 have considerable amounts of money would drag
24 out a case by going through an extra level of
25 appeals and keep the worker waiting for any kind



1 of a result.

2 Obviously the worker who doesn't
3 have any money is more vulnerable than the employer
4 who probably has a lot more resources available
5 to him. I know you met with them and I wonder
6 if there has been any kind of resolution to that
7 controversy or those concerns?

8 DR. HILL: I don't think the
9 controversy existed. I offered to meet with
10 Mr. Pilkey and sit down and discuss it. He had
11 some concerns, I told him what the Ontario
12 Labour Relations Board was permitted to do to
13 strike at the very heart of the Ombudsman's
14 operation particularly if you go to workers'
15 compensation and a number of other things
16 and another quasi-judicial
17 tribunal and I offered to meet with him and
18 discuss it to get their anxieties cleared away and
19 to tell you the honest truth they didn't have time
20 to meet with me.

21 MR. PHILIP: So it doesn't seem
22 to be a major problem?

23 DR. HILL: No, it does not. In
24 the past of course this has been going on smoothly
25 for ten years before this intervention of the



1 Board at this time. In the past we worked
2 out with ORV officials and we had no difficulty
3 at all. It has been very recent. I made the
4 effort to meet with Norm Durell and I don't know
5 what happened, but there has been no animosity
6 between us, but I said "When do you want to meet?"
7 And they said "We haven't got the time right now."
8 That is what happened unfortunately. I will still
9 pursue it though.

10 That case is going before ...

11 MR. PHILIP: It would help to
12 solve their concerns.

13 DR. HILL: That case is going
14 forward as you know and there won't be any
15 further delays. We hope it will be heard in the late
16 fall or early winter.

17 MR. PHILIP: That terrible
18 bureaucratic monstrosity that seems to do as little
19 as possible but still gets an awful lot of notoriety
20 is the HUDAC home warranty program. There
21 was a dispute between you and the HUDAC home warranty
22 program to see if you had jurisdiction to review
23 its decisions. I wonder if that has been resolved.

24 DR. HILL: We haven't had a
25 single case.



1 MR. PHILIP: They refused to
2 recognize your jurisdiction at one point, did they
3 not?

4 MS MORRISON: We haven't had
5 any cases at the moment.

6 MR. BELL: You don't have juris-
7 diction, do you?

8 MRS. MESLIN: That is one of the
9 areas we will be addressing in the expanded
10 jurisdiction paper.

11 DR. HILL: That is right.

12 MR. PHILIP: But there was a case
13 a couple of years ago where that was the challenge
14 that you were trying to exercise jurisdiction over
15 the HUDAC home warranty program, was it not?
16 They denied that you had the right.

17 MS MORRISON: We didn't address
18 the HUDAC portion of that complaint. The complaint
19 was addressed through the Ministry but we did not
20 at that time, nor have we since had a complaint
21 on HUDAC. It was one of the issues raised when
22 we were discussing the amendment on jurisdiction ...

23 MR. PHILIP: You got over the
24 problem by going through the ministry, but neverthe-
25 less HUDAC still contends you don't have jurisdiction



1 to review its decisions?

2 On page 24 you talk about the
3 kits for the schools. I am wondering who are those
4 kits addressed to and what success have you had,
5 which school boards are using them, can you expand
6 on that?

7 DR. HILL: I would have to find
8 out to tell you the truth, Mr. Philip, I will
9 have to report back to you on where they have
10 been sent, what has been done with them.. Milan
11 is not here to tell me that but I can tell which
12 boards we have had a number of requests. We are
13 developing the kits but I can't tell you exactly
14 where they have gone at the moment.

15 MR. PHILIP: The circulation of the --
16 what is the circulation of the newsletter in Braille?

17 DR. HILL: About 8,000. Eleanor
18 tells me it is approximately 8,000.

19 MR. PHILIP: Have you had any
20 increase in case work as a result of that
21 circulation to blind people?

22 MRS. MESLIN: None at all at this
23 point.

24 MR. PHILIP: One of the criticisms
25 that I always have of the previous Ombudsmen was



1 the lack of grievance procedures and indeed some
2 of the staff morale of the excellent staff under
3 previous administrations and once you and
4 Mrs. Meslin came to the fore there were a number of
5 important changes which you referred to on page
6 7 in terms of performance appraisal, grievance
7 procedure and also some reasonable way of arriving
8 at salaries so there is not a lot of questions as to
9 why someone was paid a certain salary at a certain
10 level.

11 I am wondering has there been
12 a change in staff turnover in the last year having
13 put in this procedure? How many grievances have
14 been followed up, what is happening in terms of
15 the staff? I know you lost a couple of excellent
16 people but it was because they went off to excellent
17 jobs elsewhere and that is not their
18 Fault.

19 DR. HILL: Maybe the WCB offered
20 them more money. We are going to be dealing with
21 this a lot of this tomorrow but however I will
22 deal with your first question about the grievances.
23 It is in place and working well. We have had one
24 grievance to date. It has been resolved internally,
25 no problems. We had one grievance, our first



1 grievance and I must say and I will say again
2 tomorrow that it is the only Ombudsman's office
3 in Canada that has a grievance procedure. My colleagues
4 say don't put it in place but I put it in place
5 and it is working well and we had one grievance
6 and it was resolved and there doesn't seem to be
7 other grievances right now.

8 In terms of salary and some high
9 level people leaving I think Eleanor can speak
10 to that. Do you want to speak to that, Eleanor?

11 MRS. MESLIN: I personally think
12 it would be unfair to look at whether the grievance
13 procedure has any effect because in point of fact
14 the grievance procedure has just begun to work. We
15 have been working with the employee grievance
16 committee to iron out some of the kinks and you
17 can't make any determination about what that effect
18 has on employee turnover.

19 MR. PHILIP: I have one question
20 which you may want to answer in essence and that
21 is with the closing down of the regional offices
22 how much economies were obtained and how does that
23 relate to the opening up of the part-time
24 Ombudsman representative or whatever term you used?

25 MRS. MESLIN: Field officer.



1 DR. HILL: We didn't close down
2 the regional offices.

3 MRS. MESLIN: We can handle
4 that in essence but I think I should point out
5 to you we have closed down no offices. We have
6 decreased numbers of people working for us but
7 all our offices that were originally there are
8 still there.

9 DR. HILL: We just went out into
10 the field, that is all.

11 MR. PHILIP: Phasing down rather
12 than closing down, what are the economies realized
13 and how does that compare to the new model you are
14 working with?

15 DR. HILL: I will have Alan prepare
16 that stuff. There have been some savings. We can
17 give you that during the estimates. We can't give
18 it to you immediately but I just don't have that
19 particular answer with me in front of me, but I
20 will ask Alan to prepare something on that.

21 MR. MILLS: Sure.

22 DR. HILL: We will give you that in
23 the estimates if it is okay with you, Mr. Philip.

24 MR. PHILIP: I would like to deal
25 some systemic problems but I would rather deal with



1 them in the estimates.

2 DR. HILL: We are going to raise
3 some of them tomorrow.

4 MR. PHILIP: I am wondering,
5 Mr. Chairman, you mentioned this morning we would
6 review some of the things we had looked at in our
7 last few days and I wondered if you wanted to get into
8 that at this point in time or whether there
9 were other matters to be dealt with.

10 MR. BELL: There are a couple of
11 other matters to be dealt with. They flow one from
12 the other so if you are going to talk about the
13 observations you made in the eleventh report and
14 then we can get into what we have heard and seen
15 it in the last two days.

16 MR. PHILIP: Okay. Maybe I will
17 give the floor to some of the other members if
18 you don't want to get into that.

19 THE CHAIRMAN: Mr. Ashe.

20 MR. ASHE: Thank you, Mr. Chairman.
21 Dr. Hill, in your report this morning on page 4
22 you referred to the fact that for the first time
23 there are no cases outstanding from the previous
24 fiscal year. And starting on page 33 of your
25 report "they have now been equitably resolved



1 to my satisfaction "are the words you used. Would
2 you summarize how these four have been brought
3 to the resolution of "equitably resolved to
4 my satisfaction"?

5 DR. HILL: Yes. In the first case
6 involving a teacher, I think it was case No. 1,
7 which case had been handled by the government
8 operated certificate review advisory committee
9 sponsored by the Ministry of Education, they had
10 argued that that teacher should be restored. The
11 Ontario Teachers Federation also said that that
12 teacher's certificate should be restored based
13 on a follow-up of what had happened in his life
14 since that incident. They also argued if there
15 was a belief in rehabilitation, if the idea and
16 theory of rehabilitation was to work that they
17 certainly felt this was a case for rehabilitation
18 and the psychiatrist's reportsaid the same thing
19 and the John Howard Society came down with a report
20 saying the teacher's certificate should be restored.

21 I made my recommendation again
22 based on those other commissions and as former chairman of
23 that certificate advisory committee many years
24 ago I made the same recommendation. I simply will
25 announce it was a very difficult, most unpopular



1 no-win kind of case, but since that time and
2 in the last week or two the Ministry restored
3 the certificate. The case is closed.

4 MR. ASHE: It is your understanding
5 that in effect the Minister responded for the
6 application or re-application you suggested in
7 1985 should be done in March I think it was of
8 1986, so he gets out of it all right too?

9 DR. HILL: Yes, he responded.

10 MR. ASHE: He didn't respond to the
11 previous one and ...

12 DR. HILL: Three Ministers didn't
13 respond and the current Minister was asked to give
14 it much thought and after hearing the representations--
15 they just didn't respond, the other Ministers.
16 They didn't say yes or no.

17 MR. ASHE: The current Minister
18 turned it down and he reapplied in '86 on the
19 application ...

20 DR. HILL: The current Minister
21 wrote a statement that that person's certificate
22 should be restored. The other cases, do you want
23 to speak to that, Eleanor? Gale, do you want to speak
24 to the other cases and how they were resolved
25 exactly? The teacher one I was involved in directly



1 because it was the hottest case we had.

2 MR. BELL: I think it would be of
3 more assistance if on the other three can you just
4 speak to whether the substance of your recommendation
5 was accepted to be implemented?

6 DR. HILL: Yes. They implemented
7 exactly what I asked them in the first place. I
8 could go into more detail.

9 MR. SHEPPARD: I wonder, the two
10 cases out of the four were discussed by this
11 committee, were they not?

12 MRS. MESLIN: These were new. I
13 don't think so.

14 DR. HILL: You are talking about
15 the special report?

16 MR. PHILIP: The process wouldn't
17 allow it to be discussed.

18 DR. HILL: They were never
19 discussed before the committee. They were coming
20 before you in the fall as they did in the past.

21 MR. BELL: If I can just follow up on
22 that, why did it happen this time? Why did it
23 happen this time that it has never happened
24 before that you got them all off your table?

25 DR. HILL: Well, I will give you the
general and Eleanor will give



1 you the specifics. I said to the committee when
2 I came on the job that we were going to talk,
3 talk and keep doors open without sacrificing the
4 rights of the complainant. So we just kept
5 talking and I interceded where necessary which
6 I rarely have to do. I worked to my conciliation
7 skills as best I could and got co-operation. I had in
8 the case of the Workers' Compensation Board I must
9 say a whole new attitude developed regarding how
10 to work out these problems with Dr. Elgie.

11 MR. PHILIP: We noticed the same
12 thing.

13 DR. HILL: I sat down with
14 Dr. Elgie, is this what you are talking about...

15 MR. BELL: Yes. I want to get
16 at what is happening if anything to permit you
17 to get them off the table. What you told us quite
18 categorically was that not only the letter but the
19 substance of those four recommendations has been
20 accepted to be implemented and that has never
21 happened before.

22 DR. HILL: Eleanor wants to get
23 on this, but I had a series of luncheon meetings
24 with Dr. Elgie and we were very candid. We sat
25 down and hammered it out and he said "I agree."



1 It is as simple as that, "I agree we are going to
2 do it." At the lower levels there was a lot of --
3 that is essentially what happened. Eleanor can
4 add to it.

5 MRS.MESLIN: I think one of the
6 important factors is we started it last year and
7 continued this year was the Ministry where we had
8 numbers of cases as with WCB agreed to set up
9 committees of senior people that would meet on those
10 cases that were particularly problematic to see
11 whether there had been at any level either some
12 breakdown in communication in terms of our two
13 working groups or something that was not coming
14 out in the long run and that in effect is the reason
15 why we had such a dramatic decrease because most of
16 our recommendation denied cases where WCB and that
17 ad hoc committee meets with us on a regular basis.
18 I think that that in effect has gone a long way
19 towards being able to implement our recommendations.

20 THE CHAIRMAN: Did you have a
21 supplementary?

22 MR. HAYES: I thought for members
23 of the public here could you explain how the
24 cases get to Members of the Legislature or to the
25 Committee?



1 MR. BELL: In terms of the so-
2 called recommendation denied cases members of the
3 public appreciate that represents the very last
4 stage of the Ombudsman's process. The very
5 beginning stage in the context of what we heard
6 this morning is the listening post stage. That
7 is where there is communication between a
8 representative of the Ombudsman's office and a
9 member of the public who may have a concern or
10 has been contacted about the actual complainant.
11 That complaint goes through the process as
12 prescribed by the legislation including substantially
13 the investigative process, a let the people
14 know process what is happening at various stages
15 and give them an opportunity of providing the
16 necessary input, et cetera.

17 If through all of that process
18 the complaint is still outstanding the Ombudsman
19 formulates a conclusion or opinion I should say
20 that the bottom line, the decision or the act
21 or the omission which gives rise to the complaint,
22 the decision against the governmental organization
23 is wrong and that accordingly something should
24 be done. If the Ombudsman concludes that his bottom
25 line is wrong he may make certain recommendations



1 within the language of the legislation and he does
2 that in the form of a report to the governmental
3 organization with the recommendation that if that
4 governmental organization does not in a period of
5 time or under certain conditions stipulated
6 implement the recommendation the Ombudsman may after
7 first going to the Premier to give the Premier
8 an opportunity to be involved report refusal
9 to implement the recommendation to the legislature.

10 Once that is done then this
11 Committee kicks into action. That is what Dr. Hill
12 and his staff have been doing at this time. They
13 have in effect put us out of business a bit, but
14 I am sure that won't happen for every purpose in
15 the future.

16 DR. HILL: We were just lucky.

17 MR. BELL: We all know that it
18 won't. So this fall unlike any other time this
19 Committee will not be dealing in a detailed way
20 with the recommendations, it will not have to make its own
21 decision which of the two decisions is to be
22 preferred and recommended to the legislature.
23 Can I, Dr. Hill, just touch upon some things which
24 you said in your statement, your report within the
25 context of where we are?



1 As I understand your operation
2 Sioux Lookout comes within the purview of your
3 district office in Kenora, is that right?

4 DR. HILL: Yes, Kenora.

5 MR. BELL: Kenora reports to North
6 Bay regional office?

7 DR. HILL: No, Thunder Bay.

8 MR. BELL: You are right, Thunder
9 Bay, which in turn reports to Toronto head office,
10 is that right?

11 DR. HILL: Yes.

12 MR. BELL: You have a district
13 office in Kenora. To put some flesh on the
14 operation what does the district officer do vis-a-vis
15 Sioux Lookout in terms of contact with the Sioux
16 Lookout area or communications with or making his
17 presence felt or known?

18 MR. SAVAGE: Maybe I will address
19 that. There has been a change in the past year
20 in what the Kenora district office and the other
21 district offices do and from what they have done
22 in the past. They really were largely based in
23 their local areas and didn't do much travelling
24 around, but what the Kenora officer is doing now
25 is setting out a 12-month sort of master plan in



1 terms of what communities I am going to visit this
2 month and that month and they can change then as
3 time goes on and that is basically the master plan.
4 Sioux Lookout is in that plan and so there are
5 regular visits to different organizations in
6 Sioux Lookout and there are follow-up visits as
7 well.

8 I have developed a system of
9 reporting so there are now weekly reports that
10 come into me basically on what has occurred, what
11 happened, any complaints, when is the next visit
12 and so on so we keep monitoring as time goes on.
13 The idea really is to use Kenora as just a kind of
14 springboard base for Dryden, Sioux Lookout, Fort
15 Frances, Sioux Narrows, anything that falls in that
16 radius and also the reserves in Treaty III in that area.

17 MR. BELL: Part of this plan I
18 understand it is the district officer is undertaking
19 the dual function of proactive-listening post?

20 MR. SAVAGE: Right.

21 MR. BELL: Can we assume for the
22 moment one of the visits to Sioux Lookout an
23 individual comes to your district officer with
24 a complaint which is on its face a jurisdictional
25 complaint and on its face has some seriousness?



1 Let's take for example, let's
2 say the Ministry of Natural Resources and I assume
3 this is a native complaining, the Ministry of
4 Natural Resources is taking certain positions
5 which will interfere with this person's abilities
6 to earn a livelihood. What happens to that?

7 MR. SAVAGE: That is a good question.
8 What has been happening up until now is that the
9 person in Kenora taking the complaint would act
10 largely as a conduit. In other words, gather the
11 complaint, send it down to Toronto, Toronto
12 investigates and really that person would lose touch
13 with the complaint and also the complainant to a
14 very real degree. That is beginning to change. All
15 this is new, so I can't say there has been some
16 massive change. Obviously it takes time. It is
17 sort of a new philosophy. Where it is possible
18 to investigate a complaint in the region, in other
19 words, let's say there is a decision-making
20 government agency like an area office or regional
21 office in Comstock or something like that in the
22 region so it is practical that the district officer
23 could conduct an investigation in the local area
24 then we are going to begin to implement that.
25 So gradually begin to implement more of a whole



1 service in the north relative to what existed
2 before which was just a front-end service and
3 everything else really being done in Toronto.
4 That is just beginning and it is going to take
5 more taining. It is going to take more inter-
6 actionbetween the district offices and the Toronto
7 investigation people, but it is beginning. It is
8 beginning to take shape.

9 DR. HILL: I have made a request
10 indeed to my staff that wherever it is humanly
11 possible regional complaints should be investigated
12 regionally. Now the problem with that of course
13 if you get something very tricky with lawyers
14 flying over the place and tough correspondence
15 and everything and you are going to be taken to
16 court we have to get our most senior staff and our
17 best lawyers in Toronto to help out, so there
18 is a collaborative approach but the trend now
19 is where possible to move with the teams in the
20 area in which the problem occurs because people
21 like to feel their complaint is going to be handled
22 locally by those offices, but it is not the
23 easiest thing to do. Transition is taking place and
24 I insist on itand that is what is happening.

25

MR. BELL: So let's express it in



1 terms of a goal that your regional and district
2 offices it is hoped will eventually perform
3 Ombudsman functions in substantially the identical
4 manner that they are being performed in Toronto?

5 MR. HILL: This has never been
6 done before but that is my goal. It is not easy.

7 MR. BELL: All right. That is very
8 helpful. Many of the areas that are in your report
9 have been touched upon. I just have one before
10 we go to what the committee said a couple of years
11 ago about travel to the north and I will do it
12 for the record at the first opportunity.

13 Dr. Hill, at page 12 of your report
14 you make certain comments about the Public Trustee
15 and in the third paragraph of this part you say:

16 "My concern at this time
17 is not with the merits of the
18 complaints made against the Public
19 Trustee, but with the unco-
20 operative attitude towards the Office
21 of the Ombudsman of Ontario.
22 This lack of cooperation may be
23 premised in part on the differences
24 in the interpretation and application
25 of our respective governing



1 legislation. However, I have
2 attempted on serveral occasions to
3 establish a more effective method
4 of working out any differences.
5 Unfortunately, I have met with little
6 success."

7 You have got a backlog and you made the last comment
8 making reference to the possibility of taking matters
9 to the courts for a resolution.

10 Does what you have set out on
11 page 12 of the report with regard to the Public
12 Trustee still apply?

13 DR. HILL: Yes. What I might do,
14 there may be a few variations on what I might
15 do but it still applies. They are most unco-
16 operative and hostile.

17 MR. BELL: Is the position taken
18 by the Public Trustee in your opinion interfering
19 with your ability to exercise your functions under
20 the Act?

21 DR. HILL: Yes, absolutely, and
22 whatever section of the Act it is they are
23 obstructing.

24 MR. BELL: Mr. Chairman, I would
25 ask you to consider, whether you wish to make a



1 decision today or not remains to be seen, but the
2 Committee has in the past had discussions with
3 representatives of governmental organizations in
4 respect of positions taken or attitudes towards
5 the Ombudsman and his operations. The matter
6 has never been brought to the Committee's attention
7 or the public's attention this specifically, but
8 I don't think it is any different. It may
9 sound strange coming from a lawyer, but I have
10 never been one to encourage access to the courts
11 to determine jurisdiction. That is long and it
12 certainly is costly. There is another possibility
13 and I urge this possibility on you and that is
14 for you through the Chairman to issue an invitation
15 to the Public Trustee at the first opportunity,
16 being the September hearings in Toronto, to
17 attend before the Committee and to respond to the
18 Ombudsman's observations and the position he has
19 taken this morning with respect to his ability
20 under the Act to work effectively. There may be
21 a very reasonable and appropriate explanation or
22 there may be a matter simply understanding or
23 appreciating what the Ombudsman's operation is
24 all about. If such an attendance and discussion
25 results in a resolution of the problems it would



1 seem to me that everybody ought -- we will
2 save some money and the Ombudsman and his staff
3 certainly will save some time. I don't know if
4 you want to deal with it today. I think it is
5 something we should consider quite seriously.

6 I don't see any reason why we
7 couldn't have a vote right now.

8 MR. PHILIP: I wonder if before
9 we do that that Dr. Hill could give us -- is it
10 possible for you to give us some examples? I
11 realize lack of co-operation may be hard, there are
12 various subtle ways of being unco-operative, but
13 I wonder if you could give us in a concrete form
14 an example not using the complainant's name of where
15 the Public Trustee has caused delays unnecessarily
16 or been unco-operative in some manner?

17 DR. HILL: The matter involves 20-
18 some cases. The Public Trustee co-operates on
19 what he wants to co-operate on, that is he will
20 give us half the file or sit across the table and
21 give us parts of the file. There are a lot of
22 old women, old men, sick people involved who are
23 indigent, people who have to be covered by the
24 Public Trustee and we have examples of how that
25 has affected us. Gale, do you want to tell us?



1 MS MORRISON: Any occasion where
2 it is possible the Public Trustee challenges our
3 authority to have the documents, to obtain
4 disclosure. There was a period of time in which
5 our agreement with the Public Trustee which was
6 brought about under the earlier Ombudsmen was for
7 the Public Trustee to hand us the documents he
8 thought were appropriate from his file. This is not a
9 very satisfactory way to do investigations.

10 Recently we have -- not just recently,
11 but in more recent times we have demanded fuller
12 disclosure and the kind of barriers to that which
13 arise are matters such as the Public Trustee saying
14 no he won't give us the file at all because he
15 doesn't believe he has to.

16 Subsequently after more correspondence,
17 more discussion saying "Yes, I will give your
18 investigator the file on such a such a day" but
19 when the investigator goes to get the file they are
20 given the file for a few minutes, not allowed to
21 photocopy, not allowed to properly peruse the files.
22 None of this -- we are not speaking of the merits
23 of these particular complaints, but we cannot judge
24 the merits of the complaints without access to the
25 information required and this is non-co-operation



1 at its best compared to other governmental
2 organizations.

3 MR. PHILIP: Of the 20 cases
4 can you give us some examples of the type of
5 cases you are dealing with?

6 MS MORRISON: Yes, a number of
7 these would be cases where people's estates have
8 been taken over by the Public Trustee for various
9 reasons, declaration of mental incompetency and
10 a subsequent declaration of fitness so the person
11 has their own estate to deal with and feels the
12 Public Trustee has not dealt properly with their
13 assests in the meantime.

14 One of our complainants for example
15 had her house sold under circumstances which she
16 didn't feel were appropriate. That wasn't an
17 appropriate decision about her estate. Other
18 situations involve delay, failure of the Public
19 Trustee's office once his authority has ceased
20 to quickly return authority over the estate back
21 to the person who is now compenent. Failure for
22 example to forward mail, change mailing addresses.
23 One complaint we had dealt with a person who had a job
24 offer mailed to him some six months ago, eight
25 months after he had assumed control over his estate



1 again. The mail went to the Public Trustee because
2 the Post Office had never been notified by the
3 Public Trustee that the complainant was now in
4 charge of his own affairs.

5 We can't get access to the kind
6 of information we need to see if there are any
7 grounds for the complaint from the Public Trustee's Office.

8 MR. PHILIP: Would a lot of these
9 cases be referrals by members of the family that
10 would try to put the estate -- "estate" is the wrong
11 word, but the values or the equities in the property
12 under Trusteeship?

13 MS MORRISON: Most of our complaints
14 are complaints either from people whose estate was
15 handled by the Public Trustee or from beneficiaries
16 of estates which were handled by the Public
17 Trustee.

18 We also have a number of complaints
19 from people who were owed money by an estate of
20 a person and the Public Trustee was unwilling to
21 pay for example funeral expenses. Most of those
22 complaints deal with non-co-operation of the
23 Public Trustee with those members of the public.
24 He refuses to communicate with them.

25 MR. PHILIP: If we were to set aside



1 a day in September would be able by that time
2 to have before us a summary of each of the 20
3 cases with a summary to the Trustee, the Public
4 Trustee and he would be advised that we would
5 go through the merits or demerits of his actions
6 in each of those cases?

7 MS MORRISON: We are not at the
8 stage of those investigations to be able to bring
9 forward ...

10 MR. PHILIP: I am not talking
11 about the merits of the case. I am just talking
12 about the merits or demerits of his action or
13 lack of action or lack of co-operation in those
14 individual cases.

15 MR. PELLETIER: We could document
16 the times and the delays?

17 DR. HILL: It is very difficult.
18 We have had nothing but tough times.

19 MR. PHILIP: It seems to me
20 reasonable we set aside one day in September to
21 examine under section 24 of the Act the actions of
22 the Public Trustee at which time the Ombudsman
23 would be present and his staff and prior to this
24 the Public Trustee would receive whatever documenta-
25 tion we are going to receive on specific instances



1 of his lack of co-operation. Is that reasonable?
2 Could that be accomplished by that time? We are
3 talking about the third week in September, is it
4 not?

5 MR. BELL: Could I make a
6 suggestion? It may not be necessary to do that,
7 but we could take just what Dr. Hill has said at
8 page 12 for now plus what he has said today. That
9 is quite a dramatic statement to say that a senior
10 governmental official is interfering with my
11 ability to perform my functions under the Act,
12 period.

13 We could invite the Public Trustee
14 to address that question and those details at page
15 12. It may be necessary after that to get
16 into the details of the complainants but on the
17 other hand it may be resolved at that stage and
18 if it is that is fine. If it is not then, members,
19 I think we should as Mr. Philip has outlined slog
20 into the detailed merits of his position on each
21 one of them.

22 MR. PHILIP: With respect to
23 counsel, I find the statement very, very damning
24 but also too general. I think that as a
25 committee we have the obligation to let the



1 public know in fairly specific terms what actions
2 were taken or not taken by a public employee that
3 is against their interest and I think that if you
4 get somebody who simply is gobbledy-gooking and
5 delaying that he will do the same thing before the
6 Committee unless we have some concrete examples
7 and if it is not too much trouble to come up with
8 concrete examples I would like to deal with and
9 throw at him specific examples.

10 It is also out of respect for the
11 Public Trustee. He is being accused or it is being
12 suggested that he is being unco-operative and I
13 think that -- that is a very general kind of
14 accusation and we should deal with the specifics
15 rather than concrete so we can come out of that
16 hopefully with some specific action, behavioural
17 action, behavioural changes that will happen on
18 his part so these things don't happen again.
19 Otherwise we will be back here in a year's time
20 then saying "Well, yes, he said he would try to
21 be more co-operative and be more open, but now
22 we have got 10 cases. Before we had 24 and now
23 we have got 10."

24 DR. HILL: It is really the
25 principle of obstruction, not the merits of the case.



1 Not giving us information. My thought originally
2 was to take him to court under the Act which
3 I could do.

4 MR. ASHE: Mr. Chairman, a
5 supplementary that was raised by Mr. Philip. I
6 think that the Committee would be wise to accept
7 the advice of counsel and try to look at this as
8 a two-stage issue if you are talking about two
9 high profile public servants in different fields
10 that obviously have a difference of opinion as
11 to their jurisdiction and I think both sides
12 would hopefully agree that the court can hopefully
13 be avoided, but I think they should come forward
14 in a public way in front of the committee without
15 getting into the specifics. Maybe already with a
16 full understanding by both sides that if that
17 isn't resolved that the case-by-case -- in the
18 short-term may have to be the next course of
19 action, but I don't think it would be very wise
20 to start out a blow-by-blow, case-by-case, if it is
21 not necessary. It may end up being necessary, but
22 I think the other route counsel has advised is
23 the correct route for the Committee to go at this
24 stage.

25 MR. PHILIP: With respect to



1 Mr. Ashe, I am not suggesting we deal with the
2 merits of the case. I am also dealing with the
3 process of the committee and Dr. Hill knows full well,
4 he has experienced investigators who have experience with
5 this, but whether we ask or deal in specifics
6 the media and press are going to ask for specific
7 examples of where the Public Trustee has not
8 performed his duty and therefore Dr. Hill is going
9 to have to prepare himself to answer those questions
10 whether he answers them directly to us or whether
11 he answers them through the CBC or they flash a
12 camera on him at the end of our Committee hearing
13 because of the serious accusation.

14 I am suggesting since he is going
15 to have to prepare that anyway that we should have
16 the value of that preparation rather than find out
17 that he has had to answer some of these questions
18 on the evening news.

19 MR. BELL: Can you decide (1)
20 whether to issue this invitation to the Public
21 Trustee for his attendance and if you decide yes
22 it may be the invitation read that the Committee
23 wishes to discuss with the Public Trustee what
24 Dr. Hill has set out on page 12 and what he has
25 said here today and if necessary at the same time



1 the detail of his actions in each of the 20-some-
2 odd cases and let them telegraph what we mean by that.
3 If it is apparent at the outset of the Public
4 Trustee's meeting with you it is not going to be
5 resolved then Mr. Philip is quite right, this
6 Committee ought not to do anything in a
7 recommendation sense without having a record of
8 evidence.

9 The reason for my suggesting this
10 is it may not be necessary to have that record
11 of evidence depending on the positions of certain
12 persons as they appear before you. So if we could
13 combine the two and if one is more good, we choose at th
14 same time, there won't be any further delay and
15 you will be fulfilling your obligations as it is
16 necessary for you so to do. I would hope this
17 Committee can resolve it without having to make .
18 any recommendations.

19 MR. PHILIP: Let me ask you one
20 question: what if we decide then at that time
21 we still don't understand what the issue is? Then
22 if you are talking about delay it seems reasonable
23 for Dr. Hill to provide to the Trustee examples
24 of what he is talking about and if there is going
25 to be a delay it is simply too abstract to do what



1 you are asking and the end result will simply be
2 another year's delay or month's delay.

3 MR. ASHE: Mr. Chairman, the whole
4 issue here seems in my view to be very clear. I think
5 it is clear in the report and it is clear enough
6 again from Dr. Hill. There is a difference of
7 opinion it would appear at least as may be put out
8 by staff of the Public Trustee's office that they
9 don't agree that the Ombudsman under the Act has
10 any jurisdiction over parts of his duties and
11 surely it is a matter of him saying yea or nay. He
12 is going to bring forth some evidence to sub-
13stantiate his position or reluctantly possibly
14 agree the Ombudsman under this section of the Act
15 has jurisdiction. Surely that is the first
16 issue you have got to resolve. If he is saying
17 "I am right" and Dr. Hill is saying "I am right",
18 and they are not backing down on their established
19 positions then you have a problem but don't go
20 past that problem until you see it is there.

21 MR. PHILIP: That is not entirely
22 the issue because to be blunt if it was less
23 clear cut he would not have released any of the
24 documents. The evidence as Dr. Hill has presented
25 it he has released some of the documents and



1 reluctantly released some of them. If it is a
2 matter of jurisdiction the matter would properly
3 have to simply be referred to the courts. It isn't
4 clear cut as to his evidence, he is releasing some
5 of the documents and using delaying tactics...

6 MR. BELL: I agree with you that
7 the process you described between the Public
8 Trustee and the Ombudsman between now and when
9 the Trustee appears should be performed and I think
10 Dr. Hill should give as many specifics as he can.
11 I think that's fine, but what I am saying is as the
12 first order let's try to co-ordinate it so the
13 first of order of business before the Committee
14 when he appears is not to get into the details
15 but to hear what his position is and Mr. Ashe
16 if it is still a problem after that is known to the
17 Committee then everybody is ready to talk about
18 the details including this Committee by the way
19 because that material would be available for the
20 Committee's reference if needed.

21 So I don't intend for you to go
22 by or even a month to go by if it is not resolved
23 after stage one. I guess if one wants to analogize
24 with a grievance proceeding, it is like a two-stage
25 grievance.



1 THE CHAIRMAN: Mr. Hayes.

2 MR. HAYES: Mr. Chairman, I feel
3 the Public Trustee should be asked to appear in
4 front of the Committee. I don't agree it is a
5 question of jurisdictional dispute because as
6 Mr. Philip has already said some information is
7 made available. It is just a matter of co-operation
8 but I really think there should be more information
9 brought out on this and I think the Public Trustee
10 should be aware of some of the specifics as to
11 why he is coming in front of the Committee. We are
12 sitting here saying -- I am not disputing what
13 Dr. Hill is saying except that we are sitting here
14 saying there is no co-operation, we are not getting
15 any information, and yet at the same time we are
16 calling someone to appear before the Committee
17 without giving that person the proper information
18 so that he can deal with that problem.

19 I think it is very important and
20 I do have to support Mr. Philip in saying we
21 should have not all the specifics of the case but
22 the information as to why he should be reporting
23 in front of the Committee so we can't say to a
24 person "You are not co-operating." When he comes
25 to the Committee meeting and he says "Yes, I am" and



1 Dr. Hill says "No, you are not."

2 DR. HILL: Let me assure you I am
3 going to be fully prepared with everything but the
4 kitchen sink in my pocket. It will be right there.
5 You have to decide. I will be extremely prepared with
6 every possible answer.

7 MR. HAYES: I think we should be
8 talking on the specific case to the Public
9 Trustee "You didn't co-operate here and only gave us
10 half the information that should be given ..."

11 MR. PHILIP: Is it understood then that
12 examples will be provided to the Public Trustee
13 before he comes to the Committee and those examples
14 would also be provided to us?

15 DR. HILL: That again has to be
16 decided. I have the examples but how you want to
17 use it, you will have to decide that.

18 MR. PHILIP: That is the only fair
19 way. It isn't fair to spring an example on a man
20 without foreknowledge and it is not reasonable for
21 the Committee not to have the examples at the same
22 time you are going to use them. So I fully
23 concur with John Bell's idea that we should have
24 the man before us to deal with the general
25 accusation, but I think the public has a right and
we have a right to know of the individual instances
and that he has a right to know before he appears



1 as to what the specific instances are of the
2 generalizations. So if we can have the under-
3 standing the documentation will be sent to him and that
4 we will receive it prior to or at the time of the
5 hearing, it doesn't matter which, then I think we
6 have got consensus.

7 MR. ASHE: How does it sound if you
8 provide appropriate documentation to give
9 particulars of the difficulty and that that
10 documentation will be provided to the Committee
11 if necessary.

12 MR. McLEAN: I don't think it should
13 be provided to the Committee. I think Dr. Hill has
14 made an accusation and the Public Trustee should
15 appear before the Committee.

16 MR. PHILIP: I concur with the last
17 resolution.

18 MR. ASHE: I put this scenario
19 to you what happens if Dr. Hill reports before
20 the scheduled attendance that he has worked out
21 his differences with the Public Trustee?

22 MR. PHILIP: Great.

23 DR. HILL: It is beyond the realm
24 of possibility.

25 MR. ASHE: Do you care then



1 to receive that detail?

2 MR. HAYES: If he is satisfied,
3 no.

4 MR. PHILIP: The Committee has
5 always preferred not to go into detail.

6 MR. BELL: I think we have that
7 understanding and as long as that understanding
8 is conveyed to the Public Trustee it is a very
9 workable suggestion subject to ...

10 MS MORRISON: Would the Committee
11 be satisfied though if we provide the Public Trustee
12 with details of the cases in which we feel
13 he has been unco-operative and he says in a letter
14 to us and to the Committee "I will provide you
15 with these documents and I will co-operate in the
16 future"? Is that sufficient for the Committee?

17 MR. BELL: Is it sufficient for
18 Dr. Hill? Turn about is fair play. If Dr. Hill
19 comes to the Committee and says "I have worked
20 out my differences and I think things are going
21 to go smoothly from now on. I think I will be
22 able to do my job" that is good enough for the
23 Committee.

24 DR. HILL: It is not good enough
25 for me. I keep thinking of those little old



1 people in the eighties and nineties ...

2 MR. BELL: That is where we take
3 our cue from you, sir. You have got to tell us
4 if it is worked out and if you haven't ...

5 DR. HILL: I will try to again consider
6 most of the problems.

7 MR. PHILIP: The analogous
8 Committee of course is the public accounts committee
9 and the attitude of that committee tends to be a
10 little bloodier than this one. It has always been
11 initially people become much more repentant if they
12 have done penance and the penance is they have
13 to answer individual accusations.

14 THE CHAIRMAN: You have moved
15 to put the resolution?

16 MR. PHILIP: Yes.

17 MR. HAYES: I second it.

18 MR. ASHE: Before I am prepared
19 to vote on it I will have to hear the specifics
20 again.

21 MR. BELL: Would you put it again?

22 MR. PHILIP: I would move that the
23 Public Trustee be invited to appear before the
24 Committee and I don't have my calendar but it is
25 the third week in September to respond to the



1 comments made by Dr. Hill in the 1985-86 Annual
2 Report of the Ombudsman of Ontario on page 12
3 of the report. I further move that the Committee --
4 that the Public Trustee and the Committee be
5 provided with specific examples of the concerns
6 expressed on page 12 regarding the operations of
7 the Public Trustee prior to the hearing.

8 MR. ASHE: Mr. Chairman, dealing
9 with the motion if the word "examples" in there
10 I think it is satisfactory but the other thing I
11 think might be helpful to the process is also to
12 make sure that maybe there should be a reference
13 to today's comments as well as the specific
14 comments contained in the report of the Ombudsman.

15 In other words, I think he has
16 further expanded on his statements in there by
17 his comments today that are now on the public record.
18 With that amendment I am prepared to support the recommendat

19 MR. PHILIP: And that the Hansard
20 of today's proceedings be provided to the Public
21 Trustee of Ontario.

22 MR. BELL: The invitation to the
23 Public Trustee will go out over the signature of
24 the Chairman?

25 THE CHAIRMAN: All agreed?



1 All in favour? Carried. The Committee is meeting
2 on the 23rd, 24th and 25th.

3 MR. BELL: Mr. Chairman, if I may
4 make a suggestion I think the last two topics
5 could be well combined. In the time remaining
6 this morning I invite members of the Committee and/or
7 Dr. Hill to comment upon the experience of the last
8 two days in the northern communities of Port
9 Severn and Big Trout Lake, particularly with the
10 background you indicated, Dr. Hill, in your
11 report and your remarks today.

12 I guess to lead it off two years
13 ago one of the fundamental concerns and observations
14 this Committee had made was that the Ombudsman did not
15 have a satisfactory presence in those northern
16 native communities. Many, the majority simply did
17 not know about the Ombudsman or the operation and
18 I think whenever it has been done prior to today
19
20 the two communities that we have met most recently
21 are aware of your operations and I don't know
22 whether you want to comment on that, sir.

23 DR. HILL: I would like to feel
24 that is the case. I think it is very early in our
25 operation in this area, it is still quite new, but



1 with the addition of Mr. Savage who has a lot of
2 experience in northern reserves and Allan Pelletier
3 who himself is a native and knows a lot of the
4 native groups we have indeed been brought closer
5 to the Ontario native community. I say that
6 categorically and I also feel that the experience
7 in great Big Trout Lake was a most touching one
8 because it says to me that I would like to see
9 us move the way they opened up on us with a multi-
10 plicity of problems. I want to see us do a special
11 sort of -- not a big study or anything encompassing
12 the whole range of problems that were presented to
13 us.

14 I have asked Mr. Savage immediately
15 to sit down with Allan Pelletier and myself and
16 the staff to draft up a plan of how we can reply in
17 a co-ordinated manner to all the problems and things
18 they brought to us yesterday. We must do so. If
19 we don't do it we are going to lose respect of the
20 native people on that reserve.

21 Again I might be in financial
22 difficulties because it is a long distance but we will
23 start immediately to respond to those questions
24 and we will keep the Standing Committee of course
25 apprised of what we are doing step by step. You



1 were there and you saw it and you heard it and the
2 only way to issue any kind of report, we don't wish
3 to put it to --we will let you know by correspondence
4 what is going on right along the line and I have
5 instructed the staff to start on that project
6 immediately to plan exactly, it is so new, it only
7 happened yesterday, how we are going to respond to
8 the problems they presented to us is not quite
9 clear yet but Allan Pelletier has some ideas and
10 Harvey Savage and I have some too, but I feel
11 fairly confident we are getting a step closer in
12 terms of our relationship with the native community
13 and I feel quite good about it.

14 THE CHAIRMAN: Any comments from
15 Members of the Committee?

16 MR. PHILIP: I wonder if it would
17 be useful at this point for any of us who has notes,
18 I know Dr. Hill's staff were taking notes on the
19 complaints yesterday and the day before to just
20 outline some of the complaints that we heard. I
21 know his staff are taking notes and will be following
22 up on it so at least we have a Hansard record
23 of some of the things members heard and some of the
24 things we will be asking you about this time next
25 year about action having been taken and some are



1 jurisdictional and others are non-jurisdictional
2 and I am not sure what we can do about some of them,
3 but some are -- the ones that are clearly not
4 within our jurisdiction we can do followups in
5 the Legislature.

6 MR. SAVAGE: You have taken notes
7 and I have as well, so we could read the details
8 into Hansard.

9 MR. PHILIP: I am sure mine are
10 not comprehensive but...

11 MR. BELL: Without the details for
12 a moment, maybe we could discuss this for a few
13 minutes before we break, but there was a communica-
14 tion in both of the communities to you and the
15 Committee that there was at least an apprehension
16 at this stage that, and some generally spoken and
17 some specific matters, that the current size and/or
18 operation of government, this is the provincial
19 government, in its formulation and/or its enforce-
20 ment of certain laws may well erode or eliminate
21 the way of life the native people wish to preserve
22 and have flourish.

23 I wonder, sir, if you have had an
24 opportunity yet to give thought to how your
25 operation should go about addressing that concern?



1 That may well be one of Mr. Philip's favourite
2 topics, it may well be a systemic problem.

3 DR. HILL: It may not well be --
4 it is. It indeed is as I have travelled northern
5 Ontario and I have been to many, many reserves. It
6 is a problem and it has to be handled carefully
7 with a lot of caution and that is why I called for
8 the senior staff to start immediately on how to
9 develop our approach and it cannot be done quickly
10 off the top of our head.
11 We will develop a manner, a modus operandi that
12 will be coordinated to respond.

13 MR. BELL: Also, sir, it might be
14 appropriate for you to consider whether after you
15 have had those meetings with those staff members of
16 yours whether you seek a meeting of the government
17 at a comparable level to address your observations
18 and conclusions and see if you can obtain -- seek
19 and obtain certain assurances in that way. It probably
20 doesn't make a lot of sense consistent with
21 Mr. Philip's point of view on how an Ombudsman
22 should operate to address the question of complaints
23 lying over certain islands if it is part of a
24 more fundamental direction.

25 DR. HILL: The thing we have
to be careful of here in looking at this whole



1 situation is the work being done for example by
2 the Commissioner of Native Affairs for Ian Scott.
3 I want to know exactly what she is doing, Roberta
4 Jamieson. She was very, very recently appointed
5 and was one of the first native lawyers and Ian
6 Scott appointed her to look after matters both federal
7 and provincial. She has two orders. So before I
8 go off half cocked I want to see where we are
9 going. I want to take some soundings and find
10 out what the Human Rights Commission is doing in
11 the north, the Race Relations Commission, Barbara
12 Jamieson under Attorney General Scott. I have a
13 number of approaches I must test out and see
14 before I rule on this thing if that is okay. That
15 is the way I want to start before I develop --
16 based on what I hear and see from those other
17 government departments, what they say they are
18 doing, I will then be able to bring my own
19 position here.

20 MR. ASHE: A very rational approach.

21 DR. HILL: Otherwise I will have
22 the ground swept from under me.

23 MR. PHILIP: It seems to me that
24 there is a two-pronged theme. One must fear
25 theirway of life was being substantially altered



1 without their being consulted and particularly if
2 the Ministry of Natural Resources was the one that
3 was most often named.

4 Secondly was that with these
5 changes that are coming perhaps local people,
6 native people would not be the ones to profit and
7 there was a gentleman with a very elaborate parable
8 or analogy talked about -- he waved some money
9 around and said it wasn't fair if outsiders get
10 \$4 for every dollar the local people get in terms
11 of mining and other benefits that may come as a
12 result of any kind of development and those were
13 the two things that seemed to come through all of
14 the conversations.

15 Now with that in the first category
16 would be the fear that there would be unreasonable
17 restrictions placed either on traffic, hunting or
18 fishing that were traditional concerns. Another
19 example, a very concrete example of it was at Big
20 Trout Lake and the MTC or rather the Ministry of
21 Natural Resources flying their planes over an area
22 that disrupted geese breeding and therefore affected
23 their cropping -- that was at Port Severn, sorry.

24 They were also -- one of the most
25 flagrant examples I have thought of an abuse or lack



1 of sensitivity to local culture and it could happen
2 with any culture was the MNR actually having a
3 building in the middle of their cemetery and
4 negotiations over and over again to try to get
5 that removed and part of that building is still
6 there and when they did remove it they apparently
7 transferred the service out of the band and I found
8 that shocking and I certainly would like to know
9 as to what happened.

10 The other thing in terms of lack
11 of sensitivity seems to be the OPP who supervise
12 the native police constables seem to be enforcing
13 the rules in a legalistic manner similar to what
14 would be done in the metropolitan Toronto area.

15 It is interesting we occasionally
16 get the same complaints from new Canadian groups
17 who feel the same way about the way police operate
18 so that people appear in the legal system when
19 more community-centred ways of solving what is
20 a nuisance or an irritant rather than a crime
21 might be considered.

22 I was concerned about the OPP
23 telling the native police constables that they
24 may not enforce the non-alcohol by-laws and I
25 think something has to be done in looking at that.



1 There was also some dispute and we were provided
2 with the documents as to who owns the airport or
3 who has jurisdiction over the airport, is it MTC
4 or is the Big Trout Lake band?

5 There was also the problem in
6 terms of reforestration that they had been contracted
7 out to private companies and the local native
8 people are not being hired, outsiders being brought
9 in to do reforestration. The same argument was made
10 in terms of firefighting although they said their
11 biggest problem in firefighting was in the case of
12 Big Trout Lake they were given \$9,000 a year to do
13 what in effect amounts to protecting government
14 buildings that were worth a considerable amount of
15 money and including their own community, in other
16 words, inadequate.

17 In terms of inadequate facilities
18 there was no screening program for young children
19 so that by the time they end up in school they
20 end in special education because of visual problems
21 that could have been corrected, hearing problems
22 and so forth.

23 There was also a comment that
24 specialists did not visit their reserve often enough
25 and therefore that chronic problems result when they



1 could be stopped earlier.

2 There was the problem at Big
3 Trout Lake where they said inadequate -- a health
4 care worker said that even if they had some shower
5 facilities skin irritations could be cleared up
6 during the winter months because the people simply
7 lack that kind of facility and cannot follow the
8 directions.

9 Fire protection also was an issue
10 in both areas. There was worry about what the
11 government might do to counteract the anti-fur
12 lobby and there is a need for greater cash flow in
13 the community to build facilities to make life
14 more comfortable and so forth.

15 There were a number of other
16 non-jurisdictional issues that were raised but I
17 think that those things were noted in terms of
18 the justice system and court worker.

19 MR. SAVAGE: There was a need
20 for some kind of local justice presence in the
21 community so people don't always get dealt with
22 by outsiders, outside the community and the problem
23 that the health aid worker made about the fact
24 that housing conditions are prime contributors
25 to disease. That is what I understood, the terrible



1 housing conditions cause chronic disease.

2 MR. HENNESSEY: Just to elaborate
3 in Port Severn and Big Trout Lake they mentioned
4 various problems they are experiencing with the
5 trapping. I had a concern there with the lack of
6 employment and the Ministry of Natural Resources
7 when it came to firefighting and things of that
8 nature did not come to the reserve and give the
9 opportunity to young people or any people who wish
10 to work and therefore when the Ministry of Natural
11 Resources do have a fire, most of the time they use
12 the Indians fighting the fire but they don't seem
13 to assist on these reserves to get people work.
14 They definitely need employment and definitely
15 receive no assistance whatsoever.

16 One thing I found very, very --
17 I did understand that the Ministry of Northern
18 Development give unorganized communities firefighting
19 equipment and train volunteers in order to fight
20 the fires and there are about 200 houses there
21 on one of these reserves and also a lot of
22 government buildings and they get the large sum of
23 \$9,000 a year which is not much money and they
24 haven't got the proper equipment to fight fires.

25 So, therefore, I would recommend



1 that the Committee ask the Minister for the
2 province of Ontario to look into the possibility of
3 giving Port Severn and Big Trout Lake volunteer
4 fire equipment and to train these people so that
5 they will have the necessary -- I felt very, very
6 much that nobody there had insurance on their homes.
7 Maybe the administrator has insurance on the
8 buildings and maybe he has a telephone, but the
9 average person there in the average home can't
10 afford to pay insurance and I think that if there
11 was a fire in the place you could get five or six
12 houses to go and they have got nowhere to go at all.
13 There is no accommodation for them. It was very,
14 very difficult. We were there and we were very
15 fortunate we had -- if you had a family of four and
16 five children and four or five houses engulfed
17 in flames -- the chief at Trout Lake said they have
18 to just stand by and watch that house burn.

19 I think that is one of the things
20 that should be done, the Ministry of Northern
21 Development should give firefighting equipment
22 and train these people so that they would have
23 something to do but also take care of some of the
24 many problems they have. If one house is destroyed
25 it is very difficult for them. Yesterday in the



1 middle of the summertime it was like wintertime
2 and the people don't realize the difference in
3 weather conditions from the southern part of Ontario
4 and up here in Thunder Bay and places like that
5 in the wintertime but even now in August when
6 you went to Port Severn it was the middle of
7 winter and parts of the lakes are frozen.

8 There are many, many things that
9 the Department should take note of and I am sure
10 they should take some action. I am sure I am
11 right in coming up and saying we should allocate
12 to them staff people to look into the complaints
13 and I also would like if the Department of Indian
14 Affairs gets these reports from the chief of the
15 bands at Port Severn and Big Trout Lake that we
16 will know what action was taken.

17 I fully support some assistance
18 for Port Severn and Big Trout Lake.

19 MR. SHEPPARD: Mr. Chairman, Port
20 Severn and Big Trout Lake I am disappointed none
21 of the Liberals on the Committee saw fit to go
22 because I think they need the same experience as
23 we did, to go up there and see what the problems
24 were.

25 I am more concerned about the



1 Ministry of Natural Resources. As was mentioned
2 yesterday just about the time the goose hunting
3 comes up they fly airplanes and drive the wild
4 geese away from some of the hunters and the other
5 thing I am concerned about and I was reading in the
6 local paper where the Minister of Natural Resources
7 in Moosonee is sending a request from nine native
8 goose camp operators to one camp operated by the
9 Ontario Northland Railroad. I think the Minister
10 of Natural Resources should be going to the
11 individual native people, to the chiefs and their
12 councillors to be discussing this because I think
13 it is operators that are looking for more business.
14 That is fine and dandy but I think the native
15 people, that their ways and means of making a living
16 should be the first concern of the Ministry of
17 Natural Resources, not for other people outside
18 and I know that some of the camp operators are
19 native people.

20 Mr. Hennessey mentioned fire
21 protection. Being a fireman, being an ex-voluntary
22 fireman there is no use having fire equipment
23 around if you don't know how to operate it, and
24 I think that in this case the \$9,000 is a
25 drop in the bucket, what they need is a fire truck and



1 a few firemen that have had some experience. They
2 might have to send them up to train them. There
3 are certain training sessions across the province
4 of Ontario. Some in northern Ontario that I know of
5 that they could send these people to to get some
6 training on how to fight fires, how to operate
7 equipment because it is very important that you
8 know how to operate equipment.

9 The other one that I was interested
10 in was they were having trouble getting into Big
11 Trout Lake and if you send help into Big Trout
12 Lake they have to have some place to live and they
13 have to have some assurance they are not going to
14 be working 24 hours a day. I think when I got
15 off the plane last night one of the drivers mentioned
16 that his girlfriend was working as a nurse in Big
17 Trout Lake and she had been in another camp and
18 or another reserve and she had moved on account of
19 a hassle. So maybe there is something in some of
20 these stories and I think it is up to the Ombudsman
21 to look into this and give both sides of the
22 story.

23 Now, they were concerned about
24 employment on the reserve. I think we saw two
25 cases of it yesterday where the Ministry of Northern



1 Affiars was employing or going to employ some
2 work there with \$5 million worth of services going
3 in.

4 Also the senior citizens complex
5 which I think was 16, there were four double bedrooms
6 and two for handicapped. I talked to the supervisor,
7 Mr. Chairman, when we were being interviewed on the
8 radio, where there was just one supervisor in
9 Kenora and all the rest is native people working
10 on that project and I say that certainly is maybe
11 not the number that should be there, but I think
12 there is some positive aspect going on at Big Trout
13 Lake.

14 I think we would like to see more
15 as a Committee, but there is only so much water
16 you can get in the trough and I think the Minister
17 should look at this and all this work can't be
18 done in one or two years. I think somebody has
19 got to work with the band, with the government
20 so that this can gradually be done on these reserves
21 in northern Ontario.

22 I think two or three of the other
23 members have mentioned were some of the things that I
24 had.

25 THE CHAIRMAN: Any further comments?



1 Mr. Hayes?

2 MR. HAYES: Mr. Chairman, this is
3 my first time coming up north this far, especially
4 being on this Ombudsman's committee. I think it
5 really gives some of us more southern members an
6 appreciation of some of the issues that these people
7 are faced with. I think we would be able probably
8 to deal more in a normal manner on some of these
9 issues along with our colleagues, I think we can
10 appreciate some of the things you have been bringing
11 up in the Legislature probably better now than in
12 the past.

13 I would like to really compliment
14 the bands at Big Trout Creek for their efforts in
15 the housing part, the senior housing and also their
16 project putting sewers in. Also at the same time
17 it was brought to our attention that there are a
18 fair number of people going into chronic care and
19 even though they have the housing for them it is
20 very unfortunate they don't have the people or the
21 services to really take care of their needs. I think
22 that is a very, very unfortunate matter that we
23 should be also dealing with.

24 The other thing I wanted to mention
25 also from talking to some of the younger people,



1 I know it is hard to get everybody together and
2 I am very glad we are on the Ombudsman committee. That
3 is really great, but I think it is important because
4 they mentioned to me that they would certainly
5 appreciate people like the Ombudsman's committee
6 when we do come to visit them that we try to spend
7 a little more time right in their community and
8 be able to mix and speak with them in a more non-
9 formal way. I think that is very, very important.
10 We certainly appreciated their hospitality.

11 I know when we first came they
12 seemed to be thinking "What are these people doing here?
13 Did they pop in to say hellow and have a nice
14 meal and say goodbye?" We know ourselves that is
15 certainly not our intent and I think they realize
16 that now. I sure hope we can probably spend more
17 time with these people. I hope that this Committee
18 will recommend we do a follow-up in these communities
19 and show them that we are there to help them and
20 listen to them. Thank you.

21 THE CHAIRMAN: Is there any
22 further discussion? Mr. Bell informs me he is
23 ready for lunch.

24 ---Adjourned at 12:06 p.m.

25 Certified Correct

S. Shambleau
S. Shambleau, C.V.R.

3

STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1985-86

THURSDAY, AUGUST 28, 1986



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Hennessey, M. (Fort William PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitution:

Ashe, G. L. (Durham West PC) for Mr. Shymko

Clerk: Decker, T.

Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman of Ontario

Meslin, E., Executive Director

Mills, A., Controller

Savage, H., Director of Regional Services

Pelletier, A., Native Program Officer

Morrison, G., Director of Investigations

Dunnill, M. H., Area Manager, Thunder Bay Office



Nethercut & Co. Ltd.

Toronto, Ontario

ALL PARTY STANDING COMMITTEE

RE: THE OMBUDSMAN

HELD: Scandia III Room, Valhalla Inn
Valhalla Road, Thunder Bay,
Ontario, on Thursday, the
28th of August, 1986

BEFORE:

Mr. Ron McNeil	-	Chairman
Mr. Patrick Hayes	-	Member
Mr. Allen McLean	-	Member
Mr. Mickey Hennessey	-	Member
Mr. George Ashe	-	Member
Mr. Howard Sheppard	-	Member
Mr. Ed Philip	-	Member
Mr. John Bell	-	Legal Counsel

Nethercut & Co. Ltd.,
Official Reporters,
185 Richmond Street West,
Toronto, Ontario
M5V 1V3

Per: S. Shambleau, C.V.R.



1 ---Upon commencing 9:15 a.m.

2 THE CHAIRMAN: Ladies and gentlemen,
3 we will come to order and begin our meeting. I
4 would like to first of all state that this is an
5 All Party Standing Committee of the Ontario
6 Legislature. I would like to introduce the Members.
7 On my far right is Pat Hayes from Essex North.
8 Next to Patrick is Ed Philip from Etobicoke. Next
9 to Ed is one of our staff members and I always
10 forget her name, Catherine Evans. Next to Catherine
11 is Todd Decker who is the Clerk and on my immediate
12 left is John Bell who is our legal counsel.
13 Catherine is also a lawyer in our library. Next
14 to John is -- gosh I forget this guy's name --
15 Mickey Hennessey from Fort William.

16 MR. HENNESSEY: Thank God the
17 trip is over. They got to leave here. Wait until
18 they get to the airport then it will be just like in
19 Cuba.

20 THE CHAIRMAN: Next to him is
21 Al McLean from Simcoe East and George Ashe from
22 Durham West. I might say to the visitors here
23 this morning we welcome you to our Committee
24 meeting and you might be interested to know this
25 Committee has visited Port Severn, Big Trout Lake



1 and now Sioux Lookout. Yesterday Sioux Lookout
2 and now Thunder Bay. This trip parallels one
3 which was taken by the Committee in 1984 to
4 Moosonee, Moose Factory, Cochrane and other places
5 in northeastern Ontario.

6 It is customary for this Committee,
7 the Standing Committee of the Legislature every
8 year to review annual reports of the Ombudsman and
9 previous to this year that review has been taking
10 place in Toronto. This year the Committee decided
11 it wanted to meet the people of the north and bring
12 the Committee to the citizens of the north.

13 Consequently this is the first time,
14 ladies and gentlemen, that the Committee has had
15 meetings outside Toronto as part of its annual review.
16 This meeting today, as other meetings have provided
17 a unique opportunity for citizens of the north to
18 observe the Ombudsman process in action and to
19 witness the relationship between the Legislative
20 Assembly and the Ombudsman.

21 I will now ask our legal counsel,
22 Mr. John Bell -- I guess you still have you Q.C.,
23 don't you, John...

24 MR. BELL: I never did get one.

25 THE CHAIRMAN: ...to address the



1 meeting.

2 MR. BELL: You have ruined my day,
3 Mr. Chairman.

4 THE CHAIRMAN: I can be thankful
5 for small mercies.

6 MR. BELL: One day last December
7 I received a letter from the current Attorney
8 General in response to a letter I had written
9 asking for favourable consideration and he said
10 I would be given every favourable consideration
11 and that was the day the Premier rose in the
12 House and said that he had dissolved it. So I should
13 think I had something to do with that.

14 MR. PHILIP: It was probably my
15 letter on behalf of my cousin.

16 MR. BELL: For the benefit of those
17 in attendance today who are not that familiar
18 with the Standing Committee and its predecessor
19 Select Committee, let me just spend a few minutes
20 in giving you an overview which will help under-
21 stand who we are and why we are here.

22 The Ombudsman Committee process is
23 now ten years old. The predecessor Select Committee
24 on the Ombudsman was struck by Premier Davis and
25 the Legislature in 1976 to attend to a specific
matter that had arisen between the Ombudsman of the



1 day Arthur Maloney and the government of the day
2 and that had to do with the so-called North
3 Pickering project, a land assembly in southern
4 Ontario near Toronto.

5 It was agreed between the Premier
6 and the Ombudsman that a vehicle of the Legislature
7 or an agent of the Legislature was necessary as
8 liaison as a means of resolving matters outstanding
9 between the Ombudsman and the government which could
10 deal with those matters more effectively than the
11 Legislature as a whole.

12 So while the Select Committee was
13 created for a specific purpose it was determined
14 very quickly that the Committee was required on an
15 ongoing basis. I used to say to the Select Committee
16 on the Ombudsman it is the only Select Committee
17 that functions as a Standing Committee and lo and
18 behold two years ago that matter was formalized.

19 The Committee's terms of reference
20 have evolved into three parts. I will deal with
21 them in reverse order, not necessarily in the order
22 of importance or priority. The Committee on an annual
23 basis receives and considers a debate as to the
24 estimates of the Ombudsman and so reports those
25 estimates to the Legislature in accordance with the



1 House rules. It has the authority to formulate
2 general rules for the Ombudsman's guidance in the
3 exercise of his functions under the Act.

4 That has been rarely exercised, certainly not in the
5 last seven years or so, but nevertheless there have
6 been rules enacted which take the form now of
7 regulations under the Ombudsman Act.

8 That function is basically one of
9 a guidance function with a certain degree of
10 overseeing function as and when necessary. It is a
11 testimony to the relationship between the office of
12 the Legislature and the rules that have been
13 formulated over seven years.

14 The last and in my opinion most
15 important function of the Committee or jurisdiction
16 of the Committee is that to receive and consider
17 reports from the Ombudsman after they are tabled
18 in the Legislature. The Ombudsman by his Act is
19 required to report annually to the House on his
20 affairs and his activities in the previous 12
21 months. That report has historically included
22 a very complete and comprehensive review of all
23 things that the Ombudsman has done, how he has done
24 it, when he has done it and how much it has cost and
25 the Committee has every year undertaken a relatively



1 specific review of phases of the Ombudsman's opera-
2 tion and you will see later this morning that
3 that will be one of the matters that are covered
4 after Dr. Hill makes his presentation.

5 More importantly, though, in his
6 annual report or in fact his other so-called special
7 reports, the Ombudsman has specified certain
8 matters wherein he has reported to various
9 governmental organizations with recommendations
10 that they do something in accordance with certain
11 provisions in the Ombudsman Act dealing with his
12 investigative, opinion-making and reporting functions.

13 Those reports have indicated that
14 the governmental organizations in question have
15 refused to implement Ombudsman recommendations.
16 Bear in mind the Ombudsman by his legislation has
17 authorities that are limited to investigation and
18 reporting with recommendations. He has no authority
19 to enforce matters to be done and at that stage
20 where the Ombudsman if I may leads off, i.e., with a
21 recommendation that hasn't been implemented is where this
22 Committee of the Legislature takes off.

23 The Committee has and will continue
24 to receive and consider those reports with
25 recommendations which have been refused by the



1 governmental organization and it will decide whether
2 the Ombudsman's recommendations be referred and
3 accepted or whether the governmental organization's
4 position is adequate or appropriate. When it
5 decides and has decided the Ombudsman's recommenda-
6 tion is to be supported it so reports that fact to
7 the Legislature and it recommends to the Legislature
8 that the Ombudsman's recommendation be implemented
9 and those that are aware of the history of this
10 Committee will know that a significant proportion
11 of Ombudsman recommendations so accepted by this
12 Committee have been accepted and adopted by the
13 Legislature.

14 Therein lies the real essence
15 I think of the relationship between the Ombudsman
16 and this Committee. It affords him an ability to
17 make his case that his recommendation should be
18 accepted and implemented and where he has made
19 his case this Committee agrees it so recommends
20 to the House.

21 In the vast majority of cases
22 the House will accept it and historically every
23 recommendation that the House has accepted the
24 governmental organization has implemented without
25 question.



1 So that is an overview, unusually
2 long-winded as I am but we will permit those in
3 the audience some further understanding of where
4 we are. While we are here as the Chairman indicated
5 is really a continuation of an undertaking started
6 two years ago, the Committee's commitment with the
7 Ombudsman that his presence in the north should be
8 expanded and further entrenched and because of the
9 relationship between the Ombudsman and this
10 Committee it was felt appropriate that the Committee's
11 process be taken to the north as well and the
12 Committee members have all acknowledged they
13 have been enriched and have much greater insights
14 into the circumstances of the north than they had
15 before. Certainly those Committee members from the
16 south.

17 Now what we are going to do today
18 will hopefully be four things, the first of which
19 has been completed, the opening remarks. We will
20 hear now from Dr. Hill who has certain opening
21 statements with respect to certain aspects of his
22 annual report and certain activities his office
23 has undertaken within the 12-month period.

24 After that there will be questions
25 from the Committee members for matters set out in



1 his opening statement and his report to be followed
2 by questions from myself where necessary.

3 After that the Committee would like
4 to engage Dr. Hill in discussions respecting the
5 presence of his office and in fact his presence
6 in the north in terms of certain comments and
7 observations that were made by the Committee in
8 one of its previous reports after its first trip.

9 Lastly, the Committee would like
10 to engage Dr. Hill in discussion respecting the
11 current trip, what matters attracted the attention
12 of the Committee members in the context of the
13 Ombudsman's operation and vice versa and hopefully
14 that exchange will lead to formulation of some
15 direction, continuation of direction of where
16 this Committee and Dr. Hill are going in terms of
17 the north and his various functions.

18 With that, Mr. Chairman ...

19 THE CHAIRMAN: Thank you, Mr. Bell.
20 Dr. Hill.

21 DR. HILL: Thank you, Mr. Chairman,
22 Members of the Standing Committee. Before I
23 continue with my statement I started yesterday,
24 let me say I welcome the opportunity again to
25 appear before you.



1 As the Chairman stated in his
2 opening comments, this is the first occasion that
3 the Ombudsman has appeared before the Members of
4 the Standing Committee in the great City of
5 Thunder Bay. I would also add that I am particularly
6 pleased to acknowledge the presence of the
7 honourable Member from Fort William, Mr. Mickey
8 Hennessey. He has been with us throughout the
9 northern swing and last night to keep us on our
10 toes he brought in two complainants and put them
11 right before me at dinnertime.

12 Anyhow we are going to handle
13 those complaints, they are Workers' Compensation
14 Board complaints. We listened to them and Eleanor inter-
15 viewed them and I talked to them and we did tell
16 them we will hear their complaints more fully
17 shortly.

18 Mr. Hennessey, you might be
19 interested to know just as an aside that in the
20 first six months of 1985 in Thunder Bay since
21 we had this -- no, the first six months of 1985
22 we had 291 complaints. After the store-front
23 opened in a comparable six months in 1986 we had
24 566 complaints, an increase of 93 per cent. I
25 attribute that primarily to the opening of the



1 store-front where people walk in off the street,
2 don't have to go up on an elevator, see themselves
3 being comfortable and that increases significantly.

4 Now those are all not jurisdictional
5 complaints. Jurisdictional complaints in 1985 in
6 Thunder Bay in the first six months 107 against an
7 Ontario government agency and for the first six
8 months of 1986 the jurisdictional complaints
9 went up from 179 to 180, but for general complaints
10 people coming in and wanting service, help,
11 assistance of the Ombudsman, I would reiterate
12 the rise has been 93 per cent just as sort of an
13 aside. You can talk to me more about that.
14 Michael Dunnill, our District Manager is here
15 today and I am quite pleased that of course he
16 can discuss the Thunder Bay office in a more
17 particular sense any time.

18 At this time I would like to
19 update for you several matters, several matters
20 outstanding from my annual report.

21 I will begin with the progress of
22 a number of special projects.

23 First my special investigation of
24 the Timmins Housing Authority. As I mentioned in
25 my report, our office had received a number of



1 complaints from the Timmins/Moosonee area,
2 which, along with my continuing interest in the
3 welfare of the local native community, prompted
4 me to appoint an investigator to conduct a
5 detailed analysis of Housing Authority files and
6 interview staff and residents in Timmins and
7 Moosonee. The investigation is being conducted
8 with the consent and full co-operation of the
9 Minister of Housing, the Honourable Alvin Curling
10 and his staff.

11 Why did I do this? Why did I
12 start this investigation? I started this investiga-
13 tion on my own notion because I noted that people
14 were living in tents in Moosonee in the middle
15 of the winter and I couldn't understand that. I
16 wanted to know why they couldn't be adequately
17 housed and why they had to live in tents. So I
18 started a discussion with the Housing Authority.
19 They consented to assist me in my investigation.
20 The project is now well underway and I hope to have
21 a report to the Housing Authority ready for
22 discussion in the fall. The report will be made
23 available to you as soon as it is finished for your
24 edification.

25 The report will essentially contain



1 the findings of our investigation and make
2 whatever tentative recommendations are deemed
3 appropriate. I am hopeful that a mutually
4 satisfactory resolution can be achieved at that stage
5 and that people won't have to live in tents in
6 30 below zero weather.

7 Another special investigation involved
8 the Workers' Compensation Board and the issue of
9 psychotraumatic entitlement, that is,
10 entitlement to benefits for psychological dis-
11 abilities arising out of the course of employment.
12 In my view the Board practices in this area will
13 not be affected by the changes in the Workers'
14 Compensation Act or by the functioning of the new
15 Workers' Compensation Appeals Tribunal.

16 Therefore, I decided to appoint one
17 of my senior investigative staff to study all our
18 files containing objections to decisions about
19 psychotraumatic disability entitlement. At present
20 my investigator is reviewing our files and consulting
21 with Board personnel who have a particular expertise
22 in this issue. When the fact gathering processes
23 are completed the investigator will prepare a report
24 and recommendations for my consideration. At that
25 time I will be in a better position to advise you



1 of our progress in this investigation.

2 A third special project involves
3 services for the developmentally handicapped in
4 Ontario. I have appointed one of my senior
5 investigative staff as a Special Project Officer
6 to investigate the increasing number of concerns and
7 complaints about the care, treatment and availability
8 of services for the developmentally handicapped in
9 a variety of settings: education, institutions and
10 the community at large. To date my investigator has
11 spent considerable time educating private organiza-
12 tions and service providers involved in this area of
13 our role and function and this has resulted in an
14 increase in inquiries and complaints. She is also
15 analyzing past complaints in order to identify
16 systemic problems and make appropriate
17 recommendations.

18 The supervisor for that particular
19 project is Mr. Savage who is our Regional Director
20 but because Mr. Savage has had considerable experience
21 working with the developmentally handicapped
22 as counsel for the mentally handicapped I have
23 asked him to supervise that project and keep a very
24 close eye on it.

25 There are also several unresolved



1 issues mentioned in my annual report. The first
2 involves my investigation of a particular nursing
3 home. After considering the response of the
4 Deputy Minister of Health to my tentative conclusions
5 and recommendations I asked for additional information
6 and clarification on a number of points which he had
7 raised. Last month I received the Deputy's response
8 to my inquiries and I am presently in the process
9 of drafting my final report on this case. I expect
10 to issue this report next month.

11 A second unresolved issue deals with
12 our 244 which is I think larger now, isn't it, about
13 250--some--a second unresolved issue deals with
14 about 250 Argosy complainants and the Ministries of
15 Consumer and Commercial Relations and Financial
16 Institutions which includes the Ontario Securities
17 Commission.

18 I have just this month received
19 the response of the Ministries some 10 long months
20 after I forwarded my tentative conclusions and
21 recommendations to them. I am presently reviewing
22 all representations I have received in this month.
23 At this stage I anticipate that my final report could
24 be ready by October of this year. Because of the
25 seriousness of these issues and the delays at every



1 stage, if my final recommendations are denied by the
2 Ministries, I intend to bring this case before this
3 Committee by way of a Special Report.

4 A third unresolved issue involves
5 the ongoing problems with the Public Trustee. It
6 was my hope that by publicly stating in my
7 annual report that this problem exists, some
8 movement toward a working relationship between
9 our agencies might be achieved.

10 Regrettably this has not occurred and
11 I am currently considering court action under
12 section 28 of the Ombudsman Act, which sets out
13 the penalties for obstructing and that is exactly
14 what I think he is doing, the Ombudsman in the
15 performance of his functions. Of course we have
16 now taken other steps as of yesterday to deal with
17 this situation and the Public Trustee will appear
18 before you I hope this fall.

19 Another unresolved issue involves
20 the Ontario Labour Relations Board. In my annual
21 report I reported the Board had succeeded in
22 obtaining leave from the Ontario Court of Appeal
23 to appeal the Divisional Court ruling that the
24 Ombudsman had the authority to investigate the
25 merits of quasi-judicial decisions. Since then



1 several delays and adjournments have occurred
2 but I am hopeful this case will be heard by the
3 Court of Appeal this fall. I have talked to our
4 counsel in this particular case, Mr. John Sopinka,
5 and he has assured me he is going to try to get
6 it on as fast as he possibly can.

7 As you may know, our office has
8 undertaken a major investigation, as a result of
9 complaints received from the Ontario Public
10 Service Employees Union, involving several
11 Ministries concerning the issue of electronic
12 monitoring in the workplace. I have appointed
13 two members of our investigative staff under
14 the direction of an assistant director, to take
15 charge of this investigation which is presently
16 in the initial stages of fact gathering
17 and interviewing.

18 It is my intention to keep you
19 informed of the progress of this investigation

20 I am also pleased to report that
21 for the second consecutive year the Provincial
22 Auditor's report on this office has given us a
23 clean bill of health. The Auditor's covering
24 letter states as follows and I quote:

25 "Our review of the office of the.



1 Ombudsman's system of internal
2 control and accounting procedures
3 did not disclose any matters of
4 significance to be reported on at this
5 time."

6 He sounds confident. I don't know.

7 I would like to publicly to thank my
8 staff, particularly Eleanor Meslin and Gale
9 Morrison for their cooperation in maintaining good
10 fiscal management in our office.

11 MR. PHILIP: We also have other
12 fish to fry at the Public Accounts Committee.

13 DR. HILL: Okay.

14 Higher productivity and better staff
15 morale are the desired benefits of good management.
16 In my recent annual report I outlined further progress
17 we have made in the management of this office.

18 We have now completed the first
19 three-tiered phase of our performance appraisals
20 with all our employees and we are beginning to
21 see some positive results. Employees have a better
22 understanding of their jobs and what is expected
23 of them, and have some input into the way these
24 jobs are done.

25 Staff morale has also been improved



1 with the implementation of an Employee Grievance
2 Procedure which was made effective on April 1, 1986.

3 To assist in the implementation and
4 functioning of the process, an elected employee
5 committee meets regularly with a comparable
6 management committee to discuss problems and improve
7 the process. To date we have received one grievance
8 which is currently in process. Indeed I can now
9 report the grievance has been resolved harmoniously
10 and I think I mentioned that yesterday.

11 I am pleased to report that this
12 is the first Canadian Ombudsman's office to adopt a
13 formal grievance procedure for its employees.

14 The procedure is a one-year pilot
15 project so that employees and management will have
16 time to assess the procedure and recommend any
17 changes to the process.

18 I am confident that the grievance
19 procedure's implementation will go a long way to
20 improving working relationships within the office of
21 the Ombudsman.

22 Higher productivity continues to be
23 a priority during my administration. In commenting
24 on the past fiscal year, 1985-86, I am pleased to
25 report that our trend toward greater efficiency



1 has not diminished.

2 The number of complaints and informa-
3 tion requests closed in the past fiscal year has
4 increased from the previous year to an all-time
5 high of 14,210. This includes 5,235 jurisdictional
6 complaints, 6,266 non-jurisdictional complaints
7 and 2,709 information requests.

8 The average duration to close the
9 5,235 jurisdictional complaints was 113.2 days.
10 Last year the average duration to close the 5,366
11 jurisdictional complaints in fiscal year 1984-85
12 was 229 days.

13 The non-jurisdictional average was
14 42 days last year and 9 days in 1985-86.

15 The average duration number for fiscal
16 year 1985-86 was generated by our new computer
17 system and I am assured of its accuracy. I am
18 pleased to report that we have achieved a significant
19 improvement in the time it takes to close juris-
20 dictional and non-jurisdictional complaints over
21 last year and I am convinced that this trend will
22 continue.

23 Related to file closings has been
24 the problem of backlog - cases ongoing for more than
25 a year. In many cases this delay is beyond our control.



1 For example, in two of our trust company files we
2 had to discontinue our investigations while police
3 and court proceedings were in progress.

4 This accounted for almost four years
5 delay. In many WCB complaints when medical re-
6 examinations are required the doctors' reports
7 are often six or more months in coming to
8 our office or the Board.

9 However, this year we have turned our
10 attention toward all cases of over one year and
11 can report the following:

12 Since the installation of the new
13 computer system in August 1985, our management
14 reporting and monitoring systems have been
15 improved to allow for easy identification of
16 problem files and delays. Data collection procedurs
17 have been revised to identify bottlenecks in order
18 to pursue corrective action and assist in expediting
19 case processing.

20 For example, one report contains an
21 analysis of all files in progress by the time
22 elapsed since the files were opened. Therefore,
23 it identifies files that have been in progress for
24 more than one month, more than three months, six
25 months or over one year.



1 Another report indicates each file where
2 more than two months has elapsed without a change
3 in the file's status.

4 Reports such as these allow the
5 Executive Director, the Director of Investigations
6 and all Assistant Directors to closely monitor the
7 progress of each case and see that none falls through
8 the cracks.

9 A standard has also been set whereby no
10 case will go longer than three weeks without some
11 action being taken on it. This is monitored by
12 each Assistant Director.

13 We have also begun to collect data,
14 on computer, to verify that all tentative and final
15 reports are issued within five weeks of the
16 case conference.

17 Another use we will put to our new
18 computer system is the collation of data about
19 M.P.P. contacts and referalls. To date we have
20 not routinely counted contacts with M.P.P.s on our
21 computer system but as of July 1st of this year we
22 have started counting referrals by M.P.P.s and
23 others.

24 I am advised that during the month
25 of March, 1986, seven complainants were referred



1 to this office by M.P.P.s. If that number is
2 representative, and I am sure it is from the letters
3 coming to me, one could infer that 84 complainants
4 are referred to us in a year by their M.P.P.s.

5 MR. PHILIP: I sent six. Who is the
6 other guy?

7 DR. HILL: We also get regular
8 requests for assistance from federal members. I
9 received several letters from the Member of
10 Parliament Bob Kaplan in referring to complaints
11 so we are getting federal complaints coming in
12 here too from federal Members of Parliament as well
13 as members of the M.P.P.

14 On the matter of counting the
15 contacts we have with M.P.P.s, our investigative staff
16 will now be entering such information on file
17 control forms so that computer print-outs on both
18 contacts and referrals involving M.P.P.s will be
19 routinely available in the future.

20 In addition, the data collection
21 facilities formerly provided by the University of
22 Toronto have been transferred to our in-house
23 system producing a significant cost reduction of
24 \$18,200 per year. This is long-winded even for a
25 Preacher's son.



1 As I mentioned to this Committee in
2 February, we signed a five year lease for the
3 computer equipment.

4 Early in April we purchased some of
5 the equipment which we had been leasing and
6 renegotiated the lease for a period of just three
7 years. The resulting saving to the office after
8 allowing for the \$60,000 purchase of equipment
9 will be \$82,000 over the three-year term of the
10 new, shorter lease.

11 Our new system has just recently
12 become fully operational and I am hopeful that in my
13 next annual report I will be able to give effect
14 to the suggestion in our Thirteenth Report to
15 provide a list of all current investigations being
16 delayed by factors outside of this office's control.

17 This was a matter brought up of
18 course by the Standing Committee earlier.

19 The investigation of complaints is the
20 most important function of the Ombudsman. This is
21 what this operation is all about. At this time I
22 will give you a brief overview of some of the
23 work in progress by our five investigative teams.
24 First, the Workers' Compensation Board team.

25 In past years, when my predecessors



1 and I have addressed this committee concerning the
2 area of Workers' Compensation, we have always
3 had to deal with a number of cases where the
4 Ombudsman's recommendations have been denied. As
5 I mentioned earlier today and yesterday, there are
6 no cases for discussion. They have been resolved.

7 Another even greater source of
8 satisfaction is the knowledge that in the past few
9 months, the Board has accepted my recommendations in
10 approximately 20 cases. That is twice the number
11 of cases accepted throughout the whole of last year.

12 This indicates to me that cases
13 are now being processed more quickly on both sides
14 and that the Board is allowing more cases in general.
15 I believe that a co-operative and productive
16 working relationship has started to flourish between
17 the Board and my office, not perfect yet, but
18 it is getting there. I can only thank Dr. Elgie
19 for his efforts in this regard and his compassion
20 and I think that this augurs well for future cases.

21 On a practical note, our office has
22 in the last six months, been instrumental in
23 obtaining approximately \$500,000 in benefits and
24 lump sum payments for injured workers. This is
25 equal to what was allowed in the whole of last



1 year.

2 So I think that figure will rise
3 substantially. We have gained \$500,000 in the
4 last six months in benefits for injured workers.

5 The social benefitis team has
6 also been active over the past year, conducting
7 investigations in a number of fields including
8 human rights, social services, special education and
9 provincial health care.

10 Of particular note is a case involv-
11 ing the Ontario Human Rights Commission's failure
12 to conduct an adequate investigation of a complaint
13 that the school bus service, provided to handi-
14 capped children in a particular locality, was below
15 the safety standard provided to children who were
16 not handicapped. I felt that the inadequacies of the
17 Human Rights Commission's investigation were the
18 cause of the Commissioners not supporting the
19 complaint.

20 In consultation with the Commission's
21 senior staff, it was agreed that the Commission would
22 re-investigate the complaint with a view to consider-
23 ing whether a Board of Inquiry ought to be appointed
24 by the Minister. The complainant was very pleased
25 with this result.



1 Our justice, licensing and labour
2 team has been very involved in the investigation of
3 complaints related to collapsed financial
4 institutions and recently has undertaken a signifi-
5 cant and complex investigation involving the
6 takeover by the province of the property assessment
7 function.

8 On January 1, 1970, the property
9 assessors employed at the municipal level of
10 government became provincial employees. Over
11 250 people have joined in the complaint and
12 allege that they suffered a loss of pension
13 benefits because of the takeover. They contend
14 that they were given assurances by the government
15 at the time of the takeover that such losses would
16 not occur.

17 An update on the progress of this
18 investigation will be provided at the appropriate
19 time.

20 Our land use, resources, revenue team
21 investigates complaints against provincial govern-
22 ment organizations primarily in areas of property
23 assessment, housing, municipal affairs, transporta-
24 tion and the environment.

25 Recently, through the co-operation



1 of the Ontario Housing Corporation and the
2 Metropolitan Toronto Housing Authority, we have
3 been able to resolve a very sensitive policy issue
4 regarding abused spouses.

5 We received a complaint from a
6 battered wife who could not submit an application
7 for housing for herself and her two children
8 while she continued to reside with her spouse. Once
9 she was in a shelter for women, she waited 12 weeks
10 for a home visit and a total of five months to
11 receive an offer of placement. As a result of
12 our direct involvement, the Ontario Housing
13 Corporation and the Housing Authority agreed to
14 assign a special status category to battered
15 spouses who are living in situations of abuse and
16 their applications are to be given priority for
17 a home visit.

18 Some of the other issues handled
19 by this team have involved the Ministry of Natural
20 Resources and the Inflation Restraint Board.

21 With respect to the former, a non-
22 profit youth group complained that the Ministry
23 unreasonably refused to continue free camping
24 privileges for the group in one of the provincial
25 parks. Through discussions with members of our



1 staff, the Ministry of Natural Resources agreed to
2 extend free camping privileges in 1986.

3 In the latter case, a group of several
4 nurses working at a Home of the Aged had negotiated
5 a new collective agreement with their employer in
6 August, 1982. It was agreed that the wages would be
7 retroactively increased and that increase was
8 received by the nurses in August. Although the
9 wage portion of the agreement was settled in August,
10 some other items were not agreed to until
11 November, 1982.

12 In September, the Inflation
13 Restraint Act was passed and the Inflation Restraint
14 Board was created. The Board seized jurisdiction of
15 the agreement, rolled back the wage settlement and
16 ordered that the retroactive amounts paid in excess
17 of the Board's order be returned to the employer.

18 I issued a final support report
19 which recommended that the Inflation Restraint Board
20 rescind its order that the retroactive amounts paid
21 to the nurses before the passage of the Inflation
22 Restraint Act be returned.

23 Our institutional investigations team
24 continues to handle the largest volume of
25 complaints coming to our office.



1 I am happy to report that the
2 Committee made up of senior officials of my office
3 and the Ministry of Correctional Services continues
4 to function successfully in resolving many ongoing
5 concerns. I was very pleased when the Ministry
6 of Correctional Services requested my office's
7 direct participation on an internal Ministry
8 committee studying the problem of incentive allow-
9 ances for inmates. This had been the subject of
10 many, many ongoing complaints. By having one of
11 my investigators act as a resource person to
12 the Ministry's Committee, much useful information
13 has been shared resulting in the Committee now forward-
14 ing recommendations to the Deputy Minister of
15 Correctional Services which, when implemented, will
16 improve the Ministry's incentive allowance program.

17 As well, our Secondment Program with
18 the Ministry of Correctional Services is now
19 three months old and gives every indication that
20 it will be successful. With the success of the
21 Secondment Program, I have decided to move a step
22 further and as of August 18, 1986, we commenced an
23 Affirmative Action Recruitment Program for ethnic
24 minorities by hiring our first trainee investiga-
25 tor in institutional investigations. We will



1 be providing intensive training to candidates hired
2 on contract under this program with a view to even-
3 tual assignment to permanent investigator positions.

4 I have just initiated an investigation
5 on my own motion into the circumstances
6 surrounding the death of a developmentally handicapped
7 resident of a schedule 1 facility under the juris-
8 diction of the Ministry of Community and Social
9 Services. As I have previously stated, I am
10 very concerned about the protection of the
11 rights of physically and mentally handicapped
12 individuals and I will keep you apprised of the
13 results of my investigation.

14 From the overview I have provided
15 I hope you share my belief that this office is in
16 basically good health. We have a competent staff
17 in a streamlined organization. We have a workable
18 budget and a sound system of fiscal and management
19 control.

20 My Executive Director, Eleanor
21 Meslin, and her staff will be pleased to answer any
22 questions raised by the foregoing at the end of
23 my report.

24 In the near future my prospective
25 for this office involves several initiatives.



1 As I stated in my annual report,
2 I have begun a major policy initiative to improve
3 our standard of service for the Francophone
4 community in Ontario.

5 Some of the elements of this
6 initiative are as follows:

7 1. In the future all external
8 publications explaining our role and function to the
9 general public will be done in both official
10 languages.

11 2. A greater emphasis on fluency
12 in the French language will be placed in future
13 employee recruitment. Internally this process
14 has already commenced. The successful candidate
15 for the recent opening in our communications and
16 public education directorate is fluently bilingual.

17 3. We have initiated a second-
18 ment program with the Office of the Quebec
19 Ombudsman. One of our W.C.B. investigators is
20 presently working in the Quebec office, in order to
21 improve her fluency in French and to share her
22 expertise with Quebec officials in the whole
23 area of W.C.B.

24 This program will involve a
25 reciprocal placement from the Quebec office to



1 Toronto, some time this winter.

2 4. Discussions with senior
3 staff of the provincial government and the Official
4 Languages Commission for assistance in expanding our
5 internal Francophone program have been initiated.

6 These steps will be the start of
7 an ongoing commitment to ensure that our services
8 are fully available and accessible to all Franco
9 Ontarians.

10 Now that my community outreach
11 program is well entrenched in regional areas of
12 the province I will shortly turn my attention to
13 specific outreach projects in the Metropolitan
14 Toronto area.

15 This will include a look at
16 possible housing problems in Ontario Housing in
17 Metro, and a review of possible problems related to
18 the good health, care and safety of residents in
19 nursing homes and homes for the elderly in
20 Metro.

21 Finally, in maintaining my commitment
22 to ensure that those confined in provincial govern-
23 ment institutions have the same access to my office
24 as do other citizens, I will continue my program of
25 personal visits to these institutions in order to review



1 at first hand the conditions and problems that
2 exist. This is what I did when I went to the Barrie
3 jail and was appalled at the conditions of the
4 inmates at that institution.

5 Members of Standing Committee, we
6 share the same goal - to maintain the most
7 effective and efficient Ombudsman's office that
8 is possible - an office that will truly serve the
9 people of this great province. I look forward
10 to working with you to achieve this goal.

11 I thank you for the co-operation
12 and help you have extended my office during the
13 past months. I have just one further statement
14 to make, that after this is completed, Mrs. Meslin
15 is prepared to make a statement on some of the
16 initiatives we have been trying to take with
17 Ontario Housing because some of the comments that
18 have been made by members, Mr. Philip and others,
19 regarding the problems at Ontario Housing. We have
20 a few things we want to say about that.

21 Thank you, Mr. Chairman.

22 THE CHAIRMAN: Thank you,
23 Dr. Hill.

24 MRS. MESLIN: Members of the
25 Standing Committee, a number of issues have been



1 raised by Mr. Philip and other members regarding
2 particular policy problems as they relate to the
3 Ontario Housing Corporation and the Ministry
4 of Housing.

5 In addition to the in-depth study
6 being done on the Moosonee-Timmins housing problems,
7 Dr. Hill and senior staff have held meetings very
8 recently with the Minister of Housing and with the
9 new Chairman of Ontario Housing David Greenspan
10 to discuss some of the systemic issues raised
11 by members of this Committee.

12 For the Committee's information I
13 would like to outline the issues we discussed and
14 the outcome of our deliberations.

15 The first issue raised with
16 Mr. Greenspan was the transferability from other
17 non-profit housing to OHC, that is, the transfer
18 policy of OHC that is currently underway. Ontario
19 Housing, after looking into it, has told us that
20 a complete review of OHC's transfer policies is
21 now underway and a report to the Board of Directors
22 is scheduled for October, 1986.

23 The Board of Directors has assigned
24 a high priority to this issue. A goal of the policy
25 review will be to add more flexibility to the



1 transfer policy of the corporation and transfers
2 between OHC and non-profit corporations will be
3 one of the areas considered in this regard. It
4 should be noted that the Board of Directors has
5 recently met with and received a submission from
6 the Scarborough Community Legal Services and
7 several tenants in order to gain a better under-
8 standing of this issue from the tenants' point of
9 view.

10 The issue of applications from
11 persons residing in OHC, in other words, persons
12 who are now already residing in OHC but would like
13 to apply for other housing within OHC. The OHC
14 Board of Directors at its June 13th, 1986 meeting
15 approved a policy which allows applications from
16 within OHC if the applicant is otherwise eligible.
17 They have given me a copy which I can certainly
18 give to the members, but the policy, the new
19 policy will remove the restriction. In future any
20 applicant who is currently an OHC tenant or a
21 signatory to an OHC lease and who applies for a
22 separate unit will be considered eligible providing
23 they meet all the other eligibility criteria.
24 They actually would get the opportunity which they
25 have not had before. They have not even been able



1 to make that application.

2 No. 3, we had a question about the
3 requirement that sponsored immigrants provide proof
4 of sponsorship breakdown to be eligible for sub-
5 sidized housing. The OHC Board of Directors considered
6 this matter at its meeting of Wednesday, May 21st,
7 1986 and reaffirmed its policy that sponsored
8 immigrants are eligible for assisted housing if
9 they have a guaranteed income from any source at
10 least equal to that received from any federal or
11 provincial income maintenance program.

12 A circular letter has now been
13 sent to all housing authorities advising them of
14 this policy.

15 The next question we raised
16 was the differential between rates charged for
17 hydro and included in rent compared with when it is
18 paid separately. As part of a broader study on
19 utility charges and allowances a review of hydro
20 charges is now being undertaken and an adjustment
21 will be made by the end of 1986. The adjustment
22 will try to create a more equitable situation
23 among tenants with respect to these charges.

24 One area which will be addressed
25 is the discrepancy in payment made for hydro by those



1 tenants who pay their own hydro and those whose
2 hydro is covered by OHC and had a charge added
3 to their rent to cover the cost of hydro.

4 A second issue to be addressed
5 is whether non-senior citizens, single tenants
6 should be charged for hydro at the family rate
7 or the senior citizen rate, since the single person
8 consumption probably is more similar to consumption
9 of senior citizens than a family.

10 The next question we raised was
11 the classification of persons whose children are
12 attending university in another city as over-housed.
13 In other words, people with children going off
14 to university told us that they have now been
15 classified as over-housed and told they had to move
16 when in fact the children come back. Their response
17 was that this was not a matter of policy but of
18 housing authority practice. It is not the intention of
19 the policy that families where members are temporarily
20 or intermittently absent are considered over-housed.
21 Some investigation on the part of OHC will be
22 required to determine to what extent this matter is
23 a problem and they indicated it should be noted that
24 Ontario Housing Corporation encourages its tenants
25 to obtain higher education through a bursary program.



1 The corporation does not favour
2 policies or practices which would make educational
3 endeavours more difficult so that they agree with
4 us that the practice is not a good one and they
5 are looking into it.

6 The next question we raised was
7 the necessity of applicants having to provide a
8 satisfactory tenancy record. The housing authority
9 is in the process of undertaking a study which will
10 address the issue of suitability for subsidized
11 housing trying to balance the needs of housing
12 applicants with those of existing tenants.

13 When tenancy records indicate
14 disruptive or anti-social behaviour housing
15 authorities must use their discretion in determining
16 if the applicant will disrupt a project to the
17 detriment of existing tenants.

18 With respect to rental arrears the
19 housing authority priority system guidelines
20 issued in 1985 indicate that the housing authority
21 may issue points for critical housing conditions if
22 rent arrears led to an eviction if those arrears
23 were beyond the control of the applicant. In general,
24 of course, housing authorities have discretion to
25 determine whether rental arrears records are the



1 result of legitimate inability to make rental
2 payments due to affordability problems and the
3 corporation has agreed to send a circular to
4 all housing authorities which will reiterate the
5 position that applicants should not be denied
6 housing if a history of rent arrears in non-geared to
7 income housing is the result of legitimate
8 affordability problems.

9 The last question we raised was
10 the responsibility of co-tenants for total arrears
11 owing. The authority has advised us that the
12 general policy is that total arrears are the
13 responsibility of both tenants but they said they
14 are aware that some housing authorities have used
15 their discretion to allow prior tenants to be re-
16 housed if one-half of the arrears has been paid and
17 have agreed that a review will be undertaken of this
18 policy.

19 They have also indicated to us
20 that they will keep us apprised of all of these
21 ongoing reviews that they have indicated they are
22 about to commence or are in the process of commencing.

23 In conclusion we feel a good start
24 has been made to address some of the very serious
25 OHC housing problems and we will continue to meet



1 with officials in this situation and Dr. Hill will
2 make a decision in the future whether more stringent
3 action has to be taken. Thank you.

4 THE CHAIRMAN: Thank you.

5 Now the meeting is open for
6 discussion. Mr. Philip?

7 MR. PHILIP: Well, I must say I
8 am completely surprised and happy at Eleanor
9 Meslin's statement about the systemic problems.
10 They were ones I brought to your attention over the
11 years and indeed were dealt with in some part
12 but not entirely by the justice committee report
13 that unfortunately was defeated in the Legislature
14 and that Mr. Beasley had indicated he wasn't going
15 to follow because it was defeated in the Legislature
16 so this is some progress that is being made under
17 the new Chairman.

18 I had a few specific questions on
19 that, then I want to go to Dr. Hill's report. First
20 of all let me start with that one section of
21 Dr. Hill's report that deals with the individual
22 and I don't know the page, where the person, a
23 battered woman and her family could be housed --
24 as I understand the story...

25 MRS. MESLIN: Page 53.



1 MR. PHILIP: Okay. Page 53. If
2 I am not mistaken, this is one of several cases
3 like this that I brought to your attention where
4 Ontario Housing refused to grant housing to a
5 battered woman where the husband was still occupying
6 an OHC unit and the issue became and I took it up
7 with several ministers that they refused to intervene
8 in the break-up of a family.

9 The arguments, of course, that were
10 made were that social work -- when you have social
11 workers, clergy, MPPs and other community workers
12 saying this person and the children are in danger
13 and this man is not at the present time rehabilitable,
14 then what you have to do is to get the family out of
15 the dangerous situation or out of the abusive
16 situation and that economically deprived people do
17 not have the same kind of power that upper middle
18 class people have where a professional woman can take
19 her children and simply go off and rent elsewhere
20 until the husband can meet with her lawyers.

21 I am wondering, and it is not clear
22 from Dr. Hill's statement on page 53 where in this
23 case I gather the woman went to a battered
24 shelter and then got back into Ontario housing.
25 It is not clear whether or not they are going to



1 allow a transfer to a safe habitat or safe unit
2 and then of course take procedures that are necessary
3 to evict the offending party, namely, the husband
4 who is beating the wife and/or children.

5 I am wondering if Dr. Hill or
6 Eleanor can comment on that.

7 MRS. MESLIN: My understanding
8 from Mr. Greenspan is that they are.

9 MR. PHILIP: So we can get a transfer?

10 MRS. MESLIN: What is happening is
11 what they were doing as we said earlier, was the
12 woman would go into the shelter, she could only stay
13 for a limited amount of time, no home visit
14 occurred for them to assess her problem. She ended
15 up having to go back into the battering home and
16 what Mr. Greenspan has now told us the housing
17 authority is going to do primarily is as soon as
18 they are notified the woman is in a shelter they
19 will start the process of the home visit in order
20 to get her housing.

21 MR. PHILIP: Okay. I am wondering
22 on this if battering includes only physical
23 battering or if a woman who is being psychologically
24 battered, demeaned in a psychologically abusive
25 and punishing situation is also eligible for that



1 kind of transfer? In other words, where there is a
2 complete marriage break-up and where it is so
3 completely psychologically stressful to live under
4 the same roof. I have had a case where it isn't
5 always the woman either because I have had a case
6 where the man and his children wanted to move out
7 in an abusive situation. So I mean it is usually
8 the other way around, but there are cases in reverse.

9 I am wondering whether psychological
10 abuse or complete marriage breakdown if documented
11 by clergy and social workers are also open for
12 transfer?

13 DR. HILL: When we met with
14 Mr. Greenspan we didn't delve specifically into
15 psychological battering. I think the whole
16 discussion centered for the most part on physical
17 battering and as far as I can recall the whole
18 issue of psychological battering is certainly a
19 concept and is certainly a thing that should be
20 looked at but that wasn't a part specifically of
21 our discussion at that time. It doesn't mean
22 that it could never have been.

23 MRS. MESLIN: It also doesn't
24 mean that if you have a psychological battering
25 case where the woman removes herself to a shelter



1 under the same circumstances as physically
2 battered, I would think that the idea of a home
3 visit would apply there also. Then it is a
4 matter of assessment.

5 MR. PHILIP: The problem with
6 getting somebody who is psychologically battered
7 into a sheltered residence right now is when I
8 call Ernestine's, the first question is "We have
9 got a lineup. Is she in immediate physical
10 danger?"and if not they are willing to provide
11 psychological counselling and perhaps legal counsell-
12 ing, but the stress is on habitats, on womens'
13 habitats such that it is, you know, just impossible
14 to provide shelter either for that family that is
15 a woman and her children who are simply out on the
16 street can't even get in let alone somebody who is
17 simply being psychologically battered. So it is a
18 difficult problem.

19 One of the things that I have been
20 asking for for a number of years is the transfer-
21 ability from other non-profit -- to other non-
22 profit housing and in the past Ontario Housing
23 has had the policy that unless the person
24 participated in the settling up of a co-op housing
25 project or the development of a non-profit housing



1 project that they were not eligible for transfer
2 because "they were adequately housed."

3 I gather what you are saying is
4 that is going to be changed at the moment?

5 MRS. MESLIN: It is certainly
6 under review.

7 DR. HILL: We brought that up
8 specifically.

9 MR. PHILIP: Yes. You talked
10 about sponsored immigrants are now eligible
11 for accommodation and you qualified that. I gather
12 that that does not include people that are presently
13 on work permits pending landed immigrant status?

14 MRS. MESLIN: I don't know.

15 MR. PHILIP: In other words, people who
16 apply for a Minister's permit?

17 DR. HILL: We could find out and
18 provide that answer.

19 MR. PHILIP: The differential
20 in rents, hydro, that was something that both I
21 and a couple of legal clinics have been to you about.
22 I hope it doesn't simply mean that large numbers of
23 people get their rent raised as a result of them
24 feeling that they are getting too much hydro for
25 free.



1 The issue of the classification
2 as over-housed for those whose children attend
3 university, there were a couple of cases I asked
4 you to look in on that. The tenancy record, that
5 is an interesting one because Metro Toronto Housing
6 will turn down people that are in just terrible
7 economic situations who fall behind in their rent.
8 Both people become unemployed and they fall behind
9 in their rent and the landlord says they are bad
10 tenants because they are being late in their rent
11 or habitually paying on the 15th instead of on the
12 1st, and OHC says "You are a bad tenant and you
13 are not going to get in" and, you know, the
14 economic problem is a vicious circle. The reason
15 they are behind in their rent is they are not earning
16 enough to pay the rent and they are denied government
17 housing, geared to income housing and it is a problem
18 that is happening in some government co-ops. Maybe
19 we can talk about that privately. I don't know
20 whether you feel you have jurisdiction over that.

21 I have got case after case of people
22 that are getting form letters saying that they are
23 behind in their rent and that this is reason for
24 eviction. Under the Landlord and Tenant Act it is
25 grounds for eviction but in fact there are some



1 instances where people happen to get paid on the
2 15th of the month rather than on the 1st of the month,
3 and they have certain bills that come in on the
4 first and the rent then gets paid on the 15th and
5 there is a constant pattern of this and they go to
6 Ontario Housing and they say "Lookit, with my
7 income I am going to be ten days late every month
8 and here are the reasons why" and still they get
9 these computerized letters that are very threatening
10 or downtown the lawyers are the ones who are sending
11 them out and the local housing authority doesn't --
12 the local housing managers don't seem to be able
13 to put into the computer and say "Lookit, we have
14 examined this person's case. There are reasons as
15 to why they are habitually late" because when you
16 got to the court the judgesays "Do you owe any
17 money" and they say "No" and the judge says "I am
18 not going to throw this woman and her children
19 or man and wife and their children out because
20 while they have been habitually late under the
21 Landlord and Tenant Act they still pay their rent.
22 They have never gone more than a month without
23 paying the rent and so forth.

24 The problem of disruptive behaviour
25 is another thing and one of the things that I have



1 discovered with Ontario Housing or at least with
2 Metro Toronto Housing Authority is that the person
3 responsible for the damage often is not the one
4 they are going after.

5 In other words, I will give you
6 a very concrete type of example and there are
7 several examples of this. A single parent has
8 a problem with children who unfortunately become
9 whatever you want to call it, they are smoking up,
10 they are drinking, they are refusing to work, they
11 are on their way to another institution other than
12 Ontario Housing. They have a wild party and
13 disruption takes place and instead of going after
14 this guy who probably by this time is in jail and
15 saying "Lookit, you know, anything you earn in
16 jail you are going to pay back your mother and
17 your mother is going to pay off the damages and
18 you are responsible. You are 21 years old. You have
19 a responsibility. It isn't your mother's fault you
20 had a wild party that damaged the place." Instead
21 what they do then is they say "You are in arrears
22 for \$560 for damage" and they will use that to evict
23 the mother and her younger children, when in fact
24 it is her older son or maybe her alcoholic husband
25 who has done the damage. You know, it should be the



1 offending party and I realize it is often difficult
2 to pinpoint because people are afraid to testify
3 in Ontario Housing. You know, they may have seen
4 the guy but they are afraid he will come back with
5 his motorcycle gang and rumble through their house
6 if they come as witnesses, but some discretion has
7 to be made and I think maybe they have to get a
8 little bit tougher with the people the police have
9 charged with disruption and go after those people
10 who are no longer Ontario Housing tenants rather
11 than taking the easier route of saying "These
12 people are in Ontario Housing. Therefore we can
13 get the money out of them." I know it is easier.
14 You have got a captive there and I just tried
15 to negotiate a certain amount of money that is
16 going to be taken out of a woman's family benefits
17 because her son who is a punk managed to break up the
18 property and it should be that punk that is gone
19 after, not the woman, and not the food off of her
20 table being taken. I mean she is easy to get at
21 and he has probably gone to Alberta or someplace else
22 where he can do some other damage, but it should
23 be the one that is charged that has caused the
24 problem. The police know who these people are. I
25 know they can tell Ontario Housing people that.



1 MRS. MESLIN: That is one of the
2 main issues that is part of the Timmins-Moosonee
3 study and that has been one of the primary
4 allegations all along up there. I think this may
5 help us when we get the results of the Moosonee
6 report to be able to see what the responses are
7 and go from there in terms of Metro or anywhere
8 else.

9 MR. PHILIP: I am glad to see that
10 there is to be a look at the responsibility for
11 back rents by co-tenants. The usual scenario --
12 gosh, I could count on all my hands and all my
13 toes and probably those of the committee the
14 number of cases where you have a man who is
15 acting irresponsibly. He doesn't pay the rent.
16 His wife thinks he is paying the rent and instead
17 he it out at Woodbine Racetrack blowing all the
18 money or in a bar. She eventually can no longer
19 stand him so she moves back with her family in
20 Newfoundland or someplace for a while, reapplies
21 for Ontario Housing and she cannot get in because
22 he acted irresponsibly and he didn't pay the rent
23 and meanwhile the family is out.

24 If we can do something about that
25 it is just a terrible situation because, you know,



1 it can amount sometimes by the time they finally
2 get at it, can amount to sometimes as much as
3 \$1,200 or \$1,300 and there is just no way these
4 people can pay it.

5 I wanted to go through some of the
6 points that Dr. Hill had made...

7 DR. HILL: Mr. Philip, may I make
8 a little interjection here before you get into the
9 other matters? In regard to Ontario Housing I
10 think we have made a few dents in some of the
11 queries you made. I wasn't attacking specific
12 issues because I thought we could get faster action at
13 this point than by a major study. It takes two years
14 to get that kind of study done and if I could
15 attack the issues one by one, this is the reason
16 we sat down with David Greenspan to try to get
17 at some of these issues to come back with some
18 concrete proposals.

19 What I would further suggest if
20 you are interested is that I act as a broker and
21 we sit down with some of the finer points I have
22 raised with Ontario Housing and David Greenspan
23 and yourself ...

24 MR. PHILIP: I would enjoy doing
25 that.



1 DR. HILL: I can arrange that
2 in a short time.

3 MR. PHILIP: I think one of the
4 points though that Eleanor made concerns me a little
5 bit and without getting, you know -- I have to look at
6 Hansard to see exactly what you said, but some of the
7 areas are at the discretion of Ontario Housing --
8 I mean at the discretion of the local housing
9 authority. And I think it is important that
10 local housing authorities have some flexibility and
11 there is simply not a rubberstamp of policy from
12 on high, but one of the problems you have is that
13 there is inconsistency.

14 For example, there is the problem
15 that one housing authority will accept an application
16 from someone who has physical custody of the children
17 but not legal custody. Peel Housing Authority I
18 believe will accept applications. So if you have got
19 the kids in person then you can get in there.

20 However, if you happen to live in
21 Toronto you have problems getting into Metro Toronto
22 Housing Authority if you don't have legal custody of
23 the children and this can take sometimes three
24 years through the courts. There have been cases as
25 long as five years. So if you are a husband or wife



1 or man or woman and you have got kids you have got
2 physical -- I am sorry, Mickey -- did you have a
3 question?

4 THE CHAIRMAN: Did you have a
5 question?

6 MR. HENNESSEY: No, I am talking
7 to my buddy.

8 MR. PHILIP: If you have physical
9 possession of the children then you should be granted
10 accommodation because the courts can take a long
11 time to decide who has legal custody. That is an
12 inconsistency from one housing authority to another
13 and, you know, I think that is something that has
14 to be looked at.

15 DR. HILL: We can go over that
16 with Mr. Greenspan.

17 MR. PHILIP: I had some specific
18 questions on Dr. Hill's report, but I have already
19 taken a lot of time, so I can either save them for
20 the estimates which are in September or let other members
21 ask questions. If there is time later on then I
22 would like to go through them because I have all
23 the pages noted.

24 THE CHAIRMAN: Thank you,
25 Mr. Philip. Mr. Sheppard?



1 MR. SHEPPARD: Mr. Chairman,
2 Dr. Hill, I don't know whether this report this
3 morning is more interesting than the first part
4 you gave yesterday morning or not, but I have a
5 couple of short inquiries. Mr. Philip asked a
6 couple of questions I wanted to ask.

7 First of all I want to say,
8 Mr. Chairman, the press are not here again this
9 morning and there are no Liberal members here again
10 this morning and I find that rather disturbing
11 because that hearing was last Tuesday evening in
12 Toronto and I think they could have at least got
13 up here for part of the hearings today.

14 I want to ask Dr. Hill what
15 authority do you have with the Minister of Commercial
16 and Public Relations? You mentioned authorities
17 but ...

18 DR. HILL: Consumer and Corporate Re-
19 lations is under our jurisdiction and I have the
20 authority to investigate them.

21 MR. SHEPPARD: Ed Philip was
22 mentioning housing. We have a manager in my
23 particular riding and I have a lot of inquiries
24 about housing, especially for families where they
25 are divorced or separated and have one or two



1 children and they have a priority list who can get
2 in and who can't get in, but it varies.

3 I had a case the other day where
4 a lady phoned me and she had two small children
5 and she had phoned and she was second on the list.
6 She phoned me back Friday morning and she was
7 seventh on the list. Now do you have any jurisdiction
8 in looking into something like that?

9 DR. HILL: Yes, we have jurisdiction,
10 don't we, Gale?

11 MS. MORRISON: It depends on the
12 circumstances. We have jurisdiction with Ontario
13 Housing.

14 MRS. MESLIN: If it was Ontario
15 Housing and the person was complaining we could
16 certainly look into it.

17 DR. HILL: So our answer is yes.

18 MR. SHEPPARD: Fine. Now you
19 were mentioning that you wanted to put up French
20 and then you said you sent a person to Quebec and
21 to have a better understanding of the French
22 language. Have you ever considered sending anybody
23 else to upgrade their language or their fluency
24 in other studies?

25 DR. HILL: No. One of the reasons



1 that this situation happened was the Quebec
2 Ombudsman's offices had a fair amount of heavy
3 traffic in the area of workers' compensation
4 complaints and they did directly mention it would
5 be helpful to have -- be of some assistance to them
6 as well and this to me signified a very good
7 opportunity not only to give the Quebec Ombudsman
8 a hand in the whole area of workers' compensation
9 but sending one of my best investigators there
10 for a very short period of time. That investigator
11 also speaks French and she is just going to sharpen
12 her French a little bit at the same time and it brings
13 a closer working relationship between the
14 Ombudsman's offices in Quebec and Ontario and I
15 think this is a good move that should be manifested.
16 They in turn are going to send someone down to
17 Ontario to look at the Ontario program and to look
18 into the workers' compensation as well. I thought
19 it was a healthy good exchange that would indeed
20 strengthen the bond between Quebec and Ontario.

21 MR. SHEPPARD: That is all,
22 Mr. Chairman.

23 THE CHAIRMAN: Mr. Ashe?

24 MR. ASHE: Thank you, Mr. Chairman.
25 I think it is safe to say that I am sure that your



1 office, the type of referral your office gets more
2 referrals from one type of complaint than others,
3 than maybe some constituency offices do and are
4 better able to resolve the responsible type of
5 complaints on their own and that is why there are
6 fewer complaints.

7 MR. PHILIP: Maybe some MPPs are
8 better able to recognize patterns of complaints
9 and refer them to the Ombudsman.

10 MR. ASHE: You can take one
11 interpretation and I will take the other.

12 MR. PHILIP: It is a kind of stupid
13 partisan statement I would expect from you.

14 THE CHAIRMAN: Order.

15 Mr. Ashe.

16 MR. ASHE: Thank you, Mr. Chairman.

17 MR. PHILIP: The only disruptive
18 member on the Committee.

19 MR. ASHE: Amazing how some people
20 have guilt complexes.

21 MR. PHILIP: Your guilt complex is you
22 were an incompetent Cabinet Minister and you are
23 no longer there.

24 MR. ASHE: On the OHC issue for
25 the moment, Doctor, are most of your issues and concern



1 related to OHC owned facilities, that is to say,
2 facilities that are actually owned by the corporation
3 or are those that just have, for example, arrangements
4 where there is 10 per cent of the rental units...

5 MRS. MESLIN: As long as they have
6 the jurisdiction they make the decision about who
7 goes into those units and we have jurisdiction.
8 It doesn't necessarily have to be owned.

9 MR. ASHE: One question in that
10 regard. Are you aware or have you ever had the
11 situation brought to you and I am not quite sure
12 where the authority then lies where if there is an
13 agreement with a landlord, a building owner, to
14 use specific numbers, 200 units and there is a
15 contract entered into by the local housing authority
16 that ten per cent will be at their disposal on a rent
17 geared to income or whatever, now is it normal
18 or is it a straight matter of the negotiation that
19 says when there is an apartment unit that becomes
20 available the authority brings forth normally
21 three eligible from their point of view applicants
22 as potential tenants the landlord has the veto
23 for whatever their reasons.

24 MRS. MESLIN: I am not aware of
25 it. I would have to find out.



1 MR. ASHE: That is definitely the
2 situation and I am just wondering again is it OHC
3 policy or whether there is a legal issue, the
4 rights of the landlord ...

5 MRS. MESLIN: It may not be OHC ,
6 it may be the Metro Authority that has that
7 discretion. It could be Metro.

8 MR. ASHE: It is Metro in my case.

9 MS MORRISON: It might be part of
10 the contract entered into between the Authority
11 and the landlord in which case it would be not
12 something we could look into.

13 MR. ASHE: That could be the case.
14 On the Argosy situation that Dr. Hill referred
15 to and the growing number of complainants and the
16 dialogue has already grown since this was written
17 probably in the last few days, and I presume
18 that most of these are people who lost money. It
19 is pretty obvious.

20 DR. HILL: Yes, they are.

21 MR. ASHE: What is the thrust of
22 your involvement in the context of what are you
23 trying to accomplish on behalf of these people?
24 Presumably basically it is a general complaint
25 "I invested, I lost money." Is it more a concern



1 that some of the survivors if you will have made
2 assets available to others and not to those that
3 lost money? Is that the main area that you are
4 involved in?

5 DR. HILL: No. 1 we are involved
6 in trying to find out and have already found out
7 to my satisfaction that it was not administration
8 but a government agency. My mammoth report I think
9 pretty well spells that out and the bottom line,
10 Mr. Ashe, is that since I think I have found out
11 the administration I am asking for compensation. I
12 am waiting now -- I have not issued my final report,
13 but basically by tentative report says that.

14 MR. ASHE: On the developmentally
15 handicapped issue I am very much interested in that.
16 The main areas of concern and complaint are coming
17 from parents, are they coming from health care
18 workers in the context of the unions that operate
19 the facility? Again in our area we have a facility
20 that has closed treatment facility because
21 of a policy of the Ministry.

22 I might say it is my own position
23 right out front of putting those who are develop-
24 mentally handicapped in the community.
25 Needless to say some are going to disagree with
that and the union operating out in our area doesn't



1 agree with that. Where are the main areas of
2 concern in this area? This is a field I am
3 particularly interested in.

4 DR. HILL: In that case I can
5 give you some general answers but I am not an
6 expert in that area. Harvey is supervising that
7 for my office.

8 MR. SAVAGE: We are not getting
9 any complaints from the unions. Generally speaking
10 we are getting complaints from parents who are
11 making complaints and this special project just
12 got underway in the last few months but a pattern
13 is emerging there.

14 One type of complaint is that of
15 the parents who are saying their child is being
16 mistreated in some way while in the institution.
17 They may be under overly heavy restraints, may be
18 not getting adequate programs, that is one area.

19 Another whole area I think has
20 to do with, this is going to emerge in the coming
21 months as you perceived, is the discharge of
22 residents into the community from institutions
23 being phased out or closing and what kinds of
24 adequate plans is the government willing to make
25 in terms of enabling these people to live in the



1 community? What types of support programs, whether
2 it is early childhood education, day care
3 programs, support from parents, group homes,
4 alternative living situations. This type of
5 situation, recreational facilities in the community,
6 we want to look at those kinds of issues so that
7 we don't have just a plan to close down an institution
8 which really amounts to a dumping of people into the
9 community before they are ready to go -- before
10 the community is prepared to accept them in terms
11 of facilities. I don't think attitudes of people
12 in terms of the facilities make it possible to
13 live with that. Those are two major areas.

14 The latter one is something
15 which is going to emerge more and more as we get
16 into this, but the former ones are specific complaints
17 of local associations for the retarded.

18 MR. ASHE: These are more the
19 heavier care type of facilities rather than the
20 majority of ones that are being closed down are
21 not Orillia, Penetanguishine ...

22 MR. SAVAGE: No. The smaller ones
23 I understand are being closed down. The ones
24 like Orillia will probably be the last to go if
25 there is ever a total closing down of large



1 institutions.

2 MR. ASHE: Thank you.

3 THE CHAIRMAN: Mr. Philip.

4 MR. PHILIP: I wanted to first
5 of all put on the record that I cannot help but
6 totally agree with your comments about the
7 improvements in the workers' compensation after
8 Dr. Elgie took over. I think we can see, those
9 of us that are dealing and I have over 250 cases
10 ongoing with the WCB and I can say that it is a
11 breath of fresh air to have the new Chairmen
12 who seems to be able to cut through a lot of the
13 bureaucracy and make some changes and I hope that
14 Hansard will at least record it. I have told him
15 privately how I thought that he was doing a good
16 job and it would be nice to have it in Hansard
17 and that he knows publicly I am willing to say
18 publicly what I have said privately that things
19 are improving at the Board and I think that he is
20 directly responsible for these changes. Hopefully
21 we will see even more changes.

22 The other thing is that I have
23 noticed a tremendous improvement in the administra-
24 tion of your office and I know that Eleanor Meslin
25 is largely responsible for that and I think that you



1 can't have a humane office without having also
2 an efficient office and I think that should be
3 noted for the record.

4 I had some specific questions at
5 various pages and I am going to save some of it
6 for estimates. Otherwise we may not have all that
7 much to talk about. Do you have another statement like
8 this for estimates with different things in it?

9 MRS. MESLIN: Yes.

10 MR. PHILIP: Give it to us a piece
11 at a time and we can deal with it. All right.

12 On page 30 you are dealing with the
13 whole problem of mental illness as compensable
14 and the problem of dealing with it. I guess the
15 problem is that it is the process often that brings
16 about the mental illness. You know, the people
17 that were sane before, perfectly mentally healthy
18 before the accident, suddenly I think as a result
19 of the constant pressures not just from the
20 disability, loss of the arm or whatever, but from
21 the bureaucracy of the WCB has brought about the
22 kinds of neurotic behaviour that you often see and
23 it is that insecurity then, that constant bureaucracy
24 that brings about the mental illness. I don't know
25 how you measure, you know, whether somebody should



1 | be compensated because it took three years for
2 | them to finally get around to dealing with his
3 | claim and whether there is a mental illness
4 | component in that or how do you measure it? I
5 | don't know whether you have thought about that or
6 | how you measure it.

7 | MS MORRISON: I think in terms of
8 | our particular study we really are just looking
9 | at psycho-traumatic impairment in general and it
10 | includes that kind of thing because the assessment
11 | follows a long history of dealing with WCB and the
12 | question then is just is there entitlement for
13 | whatever reason the psycho-traumatic disability
14 | arose. I don't think we can look into it
15 | and say anything much about the WCB process.

16 | All we can look at is the question
17 | of entitlement.

18 | MR. PHILIP: On page 32 my question
19 | would be you say you are going to have the report
20 | of the Deputy -- in response to the Deputy Minister
21 | of Health by next month. Are you expecting in the
22 | estimates we will have an -- are you expecting it in
23 | time for our estimates?

24 | MRS. MESLIN: On page 32 you are asking if
25 | we will have the report?



1 MR. PHILIP: Yes.

2 MRS. MESLIN: Yes.

3 MR. PHILIP: We will have the
4 report so we can discuss it during the estimates?

5 MRS. MESLIN: Only if our report
6 recommends something that they refuse to implement.
7 I mean, you know, it may well be that they will get
8 our report and they will want to look into what
9 they are going to agree with or disagree with.

10 MR. PHILIP: On the -- with regard
11 to the Argosy complaints, one of the major problems
12 over the years is the inability of the Ministry of
13 Consumer and Commercial Relations to deal with the
14 registering of mortgage and provincially listed
15 trust companies and I am wondering whether your
16 report would deal with specific recommendations
17 of how that can be tightened down.

18 MS MORRISON: Tentatively some
19 of the recommendations we have made to the Minister
20 deal with exactly that kind of problem, with the
21 regulation problems, not just with the complications.
22 Our report, although it specifically arises out of
23 the Argosy complaint, has tentatively concluded
24 how administration as a result of certain practices
25 of the financial institutions Ministry needs to be



1 changed and I think we will get agreement from
2 the Ministry and a lot of those may be reviewed
3 and changed.

4 MR. PHILIP: We had three in the
5 last six months.

6
7 I think it would be useful for
8 us to look at that not only from the point of view
9 of the recommendations but also from the point of
10 view of educating the public. In the case of
11 Braemor and Astra Trust people thought they were
12 putting money into one type of vehicle that was
13 insured and in fact they were putting it into
14 another type of vehicle that was not insured and
15 anything that can be done in terms of our Committee
16 then to use it as a vehicle to at least educate the
17 public -- you can't protect everybody from themselves,
18 but you can protect the poor guy who has worked
19 all his life as we had in one case, never had a
20 day off as a farmer, sells his farm, puts all his
21 money into a mortgage company and then loses
22 everything and is on welfare at age 55 or 56 years
23 old when in fact he expected to retire on the sale
24 of that farm.

25 On page 35 I am wondering. You have



1 appointed two members to investigate, two of your
2 staff to investigate the public service employees
3 union involving the use of employing electronic
4 monitoring in the workplace. Because of your
5 jurisdiction you are not able to look at the private
6 sector, but I wonder if in your report you have
7 at least a review of the literature on the private
8 sector so that perhaps some other committee of the
9 legislature that might want to use that kind of
10 information could conduct some kind of investigation
11 into the repercussions in the private sector as
12 well because it has been I suspect more of a
13 problem in the private sector than in the public
14 sector.

15 The public sector has stronger
16 unions often than some of the private sectors have.

17 DR. HILL: Any material that is
18 available to us will be alluded to.

19 MR. PHILIP: It will be covered?

20 DR. HILL: I can't tell you how
21 extensive it is, but because it is alive then we
22 must refer to it and we must allude to it and you
23 may be sure we will be doing that.

24 MR. PHILIP: Page 38, I talked
25 about this yesterday. The question was, was there



1 a health and safety committee in the Ombudsman's
2 office?

3 MRS. MESLIN: As a matter of fact
4 one of the issues raised during one of the meetings
5 of the employee committee was health and safety and
6 they have said that they were going to come forward
7 with some suggestions. So I am hopeful that that
8 will occur. We now have just as a matter of
9 information a committee to look into non-smoking
10 in our workplace, an employee committee that has
11 done a survey of our employees and is looking at
12 the introduction of a no-smoking policy in co-
13 operation with management and the employees.

14 MR. PHILIP: I know with our caucus
15 staff it has been useful to have a health and
16 safety committee particularly so when unexpectedly
17 we found that asbestos was dropping from the
18 ceiling and you had a committee that could immediately
19 go into action and deal with it.

20 MRS. MESLIN: We certainly intend
21 to have one.

22 MR. PHILIP: There are other issues
23 particularly in this computerized age with videos
24 and that kind of problem at least you can look at.
25 At page 40 then you talk about the various



1 issues that have been -- complaints that have been
2 solved or handled or dealt with or completed.

3 Have you done any breakdown on the
4 percentage that have been -- percentage of complaints
5 where you found on behalf of the complainant rather
6 than on behalf of the respondent.

7 DR. HILL: It is in the report.

8 MRS. MESLIN: If you need any more
9 details we would be glad to provide it.

10 DR. HILL: If there is anything
11 you want more clarified we would be glad to do it.

12 MR. PHILIP: Okay. You mentioned
13 on page 41:

14 "For example, in two of our trust
15 company files we had to discontinue
16 our investigations while police
17 and court proceedings were in
18 progress."

19 Was that in Argosy and Braemor?

20 MRS. MESLIN: Fidenam.

21 MR. PHILIP: Page 51 ...

22 MRS. MESLIN: 51 did you say?

23 MR. PHILIP: Yes. On page 51 I made
24 a note to make sure I said something nice about
25 Dr. Elgie and I guess that is a financial proof



1 that things are happening. He probably has
2 something directly to do with it not to mention
3 you of course.

4 Page 53 I have dealt with. On page
5 55 what is the follow-up in the middle paragraph?
6 In other words, what is the final end result?

7 MRS. MESLIN: They accepted it.

8 MR. PHILIP: Okay. That is great.

9 Okay.

10 I find the report encouraging and
11 I am pleased with some progress that seems to have
12 been made, particularly in the area of looking at
13 patterns of problems and I hope you go on doing
14 the job for a long time to come. Thank you.

15 THE CHAIRMAN: Mr. Hennessey, followed
16 by Mr. Hayes.

17 MR. HENNESSEY: Mr. Chairman,
18 I was very pleased to see the report about
19 workers' compensation. That is an area where
20 there is not enough action being taken and so
21 you talked to the executive director. You did
22 a good job there because if somebody has a problem
23 with the WCB there are two sides to the story.

24 The WCB is not all wrong all the
25 time and it is a difficult thing I can understand,



1 we sometimes go in to the WCB and get nothing done.

2 I am very pleased with that because you are looking
3 into health and safety also which is of concern.

4 You do have another arm besides
5 elected members and it makes it a lot easier
6 to get things done. I think housing is a problem
7 that is very critical in Thunder Bay where there
8 are up to 500 people waiting for housing and I think
9 there may be a duplication but there are at least
10 300 people who are looking for accommodation and
11 I get a few people in and no doubt the other members
12 do too and we all experience that problem where you are
13 told they haven't got the necessary money to put the person
14 into housing. If you don't have enough social
15 services then you more or less have to take the place you can
16 get.
17 After all, the average person can pick their own
18 place to live because they have the money but in that
19 situation they probably get inferior quarters and
20 have to put up with a lot of unscrupulous people
21 who take advantage of them and they don't do any
22 repairs or anything and they are living in hazardous
23 conditions.

24 I think my main concerns are the
25 people involved and a lot of children, people on
low incomes. I think this has been a very difficult



1 trip but a very worthwhile one. Dr. Hill has his
2 Executive Director and the Members of his staff
3 came well prepared. The Chairman had a good
4 scapegoat in his buddy Dr. Hill and it was a good
5 trip. Everyone got along well together.

6 To you, sir, I say Todd Decker
7 prepared things very, very well. I wouldn't like
8 to go up there in January.

9 DR. HILL: Neither would we.

10 THE CHAIRMAN: Mr. Hayes.

11 MR. HAYES: Yes, thank you,
12 Mr. Chairman. On page 33 I am not sure whether
13 that is pertaining to Consumer and Commercial
14 Relations and the financial institutions which
15 includes Ontario Securities. Are we talking about
16 the same thing on page 32 and the top of page 33?

17 MRS. MESLIN: Yes.

18 MR. HAYES: Yesterday we were
19 talking about the Public Trustee with delays. This
20 is a similar case? Is it intentional or are we
21 not getting anywhere? Is it one of these things where
22 "We will get the answer to you" but they take
23 their time to do it?

24 MRS. MESLIN: Yes.

25 DR. HILL: I would say it is an



1 unconscionable delay. It is as long as ten months.
2 It is an unconscionable delay as far as I am concerned.

3 MR. HAYES: On page 40 can you give
4 us the breakdown there on non-jurisdictional
5 complaints, 6,266. We are talking about non-
6 jurisdictional complaints, do you have a breakdown
7 on that as to federal or municipal problems or
8 what are these mainly; are you dealing with...

9 MS MORRISON: All jurisdictional --
10 non-jurisdictional complaints which may be federal
11 matters, municipal matters, private organizations,
12 all the things we can't deal with but we refer
13 people to other areas.

14 DR. HILL: It is on page 29 of
15 the annual report.

16 MR. HAYES: Without having to look
17 that up right now is there a fair number of federal?

18 MR. DUNNILL: The total non-
19 jurisdictional complaints are 2,104, reports were
20 294, 672 were involved with the federal government.
21 There were 2,395 considered private, 723 were
22 municipal, 8 were international, 28 other problems and
23 42 was no organization specified. That makes a
24 total of 6,266 non-jurisdictional complaints.

25 MR. HAYES: It certainly does



1 support the Ombudsman's efforts in trying to get a
2 federal Ombudsman and at the same time I think it
3 also indicates to this Committee that we should
4 certainly be looking at more seriously what we
5 have been speaking about, extending the Ombudsman's
6 office, his jurisdiction and I am sure as we think
7 we should be looking at extending the jurisdiction
8 into municipalities.

9 MR. DUNNILL: I think it also
10 supports the case of the Department of Education.

11 MR. PHILIP: If I might just
12 ask a supplementary on those would municipal include --
13 would hospital complaints fall under municipal or
14 what category do you put those under?

15 MR. DUNNILL: That would be considered
16 private corporations.

17 MR. PHILIP: Even though it is
18 public corporations it is considered private because
19 it is not the provincial government itself. So
20 a complaint against a Crown corporation though
21 would be public because you have jurisdiction over
22 it. A complaint against a hospital, even though it is
23 public would be considered private because you
24 don't have jurisdiction over it.

25 MRS. MESLIN: Yes, the same as a



1 university.

2 MR. PHILIP: Okay. I had a question.
3 Any other provinces, do you deal with it when there
4 is -- when you have a jurisdiction within the
5 province but it relates to a resident of Ontario
6 that has a problem that another province is
7 responsible for, in other words, supposing somebody
8 comes to you with a workers' compensation problem
9 but the injury took place in the Northwest Territories.
10 Would you deal with the Northwest Territories
11 WCB because you have jurisdiction over the Ontario
12 WCB?

13 MRS. MESLIN: No. If the accident
14 occurred in the Territories, then that is their
15 jurisdiction. What we would do though is if
16 something occurred to an Ontario resident that
17 we can relate to an Ontario Ministry but the
18 person has moved out of Ontario and writes us
19 inquiring ...

20 MR. PHILIP: I am not talking
21 about that. I am talking about if you have an
22 Ontario resident who has a WCB complaint, I am
23 thinking of one I had where the fellow had asbestosis
24 and his lung was removed in the Northwest Territories.
25 Now if his lung were removed in Ontario and he had



1 asbestosis in Ontario he would be compensable
2 and you go after the WCB here. The problem is
3 dealing with the WCB in the Northwest Territories
4 and it is just a very difficult kind of situation
5 to deal with that kind of distance.

6 It might well be worth your while
7 looking at whether some recommendation could be
8 brought in to deal with perhaps if the provinces
9 could get some kind of reciprocity so that WCB's
10 that relate to other provinces and the records
11 could be adjudicated by the local WCB's or something
12 like that. It is a difficult situation. Thank you.

13 THE CHAIRMAN: Do you have anything
14 else, Mr. Hayes?

15 MR. HAYES: Yes, on page 42 you
16 talk about the delay and in many cases a workers'
17 compensation board complaint from medical re-examinations
18 are required, doctors' reports are often six or
19 more months in coming to our office or the Board.
20 Are we speaking of patients, doctors, or are we
21 talking about the doctors on the Board.

22 MRS. MESLIN: Both.

23 MR. PHILIP: Who are the worst
24 offenders? The Board's doctors or outside doctors?

25 MS MORRISON: In particular cases it



1 can be either doctor.

2 DR. HILL: Both.

3 MR. PHILIP: In my experience
4 some of the worst offenders are not the Board's
5 doctors.

6 DR. HILL: That is right.

6 MR. HAYES: Okay. I guess the
7 thing is dealing with the concerns, I agree with
8 Mr. Philip on Dr. Elgie that he has made a
9 very significant improvement in the proceedings
10 or processing of claims. I guess the question I
11 want to know these cases, and I am talking about page
12 48 or 49, you talk about these cases that were
13 delayed and your office, Dr. Hill, was instrumental
14 in getting that \$500,000 in benefits and lump
15 sum payments to injured workers, but in these
16 cases was there a dispute or was it just delayed
17 by bureaucracy or red tape? Like was there a
18 dispute?

19 DR. HILL: There was a dispute
20 and where they did not want to give the benefits
21 and we disputed it and we sat down and talked to
22 Dr. Elgie and talked to the staff and our committee
23 that we had formed between the Board and the
24 Ombudsman's office and we sat down and ironed the
25 thing out and although they disagreed at first we



1 brought them around to our way of thinking and it
2 was resolved to the complainants' satisfaction.

3 MRS. MESLIN: I think we are also
4 saying that this amount reflects the general process,
5 not necessarily the one that involved the senior
6 committee. I mean we are saying the WCB process
7 in terms of allowing complaints appears to be
8 that they are allowing more.

9 DR. HILL: They are, no question.

10 MR. HAYES: Can you give us an
11 idea what the average settlement would be and
12 at the same time what the largest individual one
13 would be?

14 DR. HILL: \$100,000 to one person.

15 MR. PHILIP: How long had he been
16 waiting for it?

17 DR. HILL: Don't ask. The \$100,000
18 we obtained a settlement after settlement negotiations
19 and we had been waiting how long for that, Gail?

20 MS MORRISON: Five years at least.

21 DR. HILL: We went through a number of
22 different officers and we finally straightened it
23 out.

24 THE CHAIRMAN: Mr. Ashe.

25 MR. ASHE: Just a brief question,



1 do you have occasion to entertain complaints against
2 the WCB by employers?

3 MRS. MESLIN: Yes, we do.

4 MR. ASHE: Do you entertain them
5 in the same fashion as if they were from an employee?

6 MRS. MESLIN: Yes, we do.

7 MS MORRISON: We do an impartial
8 investigation to see whether the complaint is
9 worthy of following up.

10 MR. ASHE: Has there been a pattern
11 throughout? I know obviously the numbers are 1 to
12 100 I suppose as well it should be obviously, but
13 do you find that there is any percentage of
14 legitimate complaints? I mean I would say I have
15 had a couple that in my view were legitimate but
16 the employer sometimes gets more frustrated even
17 than an employee.

18 MS MORRISON: I don't think we
19 can put a figure on how many employers' complaints
20 would be justified. We do not only get complaints from
21 employers,
22 but allow employers to give us representations
23 on an employee so we do get quite a bit of input
24 from employers. I expect the percentage of
25 reported complaints is about the same as it is
with the others.



1 THE CHAIRMAN: Mr. Bell.

2 MR. BELL: Thank you, Mr. Chairman.

3 Would you look at your stats? I don't want to get
4 into a lot of detail today because there isn't
5 enough time and I don't think it is fair to you
6 to call on some of your authorities which are in
7 Toronto. At least since Mr. Mills has come all
8 this way we have to ask him something.

9 Would you look at pages 30 and 31
10 of your budget report which has the spread sheets
11 of the jurisdictional matters? First a couple
12 of general questions. This statistical breakdown,
13 the statistics in the chart I take it are pursuant
14 to your new program, and in general terms how does
15 the information on this sheet differ from the
16 information given to us in previous years with the
17 old program?

18 MR. MILLS: At a general level
19 I can assure you they have been much more thoroughly
20 verified so they are more accurate.

21 MR. BELL: Is there anything
22 specifically? One of the difficulties I think we
23 are going to have to ask you for is because you
24 have changed your computer is to give us a comparison
25 sheet. It may be necessary to give us a full



1 understanding and this is not a complaint, but
2 I note every time we understand how you work up
3 your numbers you change it again. As I say, that
4 is not a criticism. So I think it is important
5 certainly before the estimates are reviewed to have
6 some comparative data and when we got back to
7 Toronto we can spend a few minutes and maybe give
8 us comparative data with the sheet and last year
9 based on your old system so we can look at it and
10 understand how it is different.

11 Can I ask you for some comments
12 under the investigations discontinued? The three
13 sections you have got approximately 4,200 to 4,300
14 under that category cumulatively. Does that
15 represent again in approximate terms -- is that
16 an increase or a decrease from previous years on
17 a percentage basis?

18 MR. MILLS: It is in the report.

19 MR. BELL: Can you give some
20 attention to that and specifically section 18?
21 Section 18, Dr. Hill, is the exercise of your
22 discretion not to investigate or not to investigate
23 further? Is that correct?

24 DR. HILL: Correct.

25 MR. BELL: That seems to me to



1 represent in comparison terms a significantly
2 higher number. The 1382 that had been discontinued
3 under section 18, if I recall previously -- well,
4 nobody should take anything from this but Arthur
5 Maloney almost never exercised that discretion.
6 Don Moran did exercise it but not significantly
7 higher. I can't recall whether the interim
8 Ombudsman did and if so it doesn't make any
9 difference, but it seems that represents I use
10 the word a substantial increase in the exercise
11 of that discretion and again I don't mean that
12 comment should be taken in any way. Some have said
13 it ought to have been exercised a lot more than
14 that.

15 Can you give us some for the next
16 time we meet, can you give us some comparative
17 analysis of the nature and extent of the increase
18 on that?

19 DR. HILL: Yes, sir.

20 MR. BELL: All right. Now, under
21 the complaints supported section there is a total
22 of 42 jurisdictional cases wherein the complaint
23 was supported under one of the three categories. Is
24 that correct?

25 MR. MILLS: Yes.



1 MR. BELL: Is that -- is your
2 program such that you can give us an analysis of
3 the duration of those cases?

4 MR. MILLS: Yes.

5 MR. BELL: All right. I would like
6 you to prepare that because you know the Committee
7 has in the past called this the essence of the
8 Ombudsman's function. It is a full-blown exercise
9 from A to Z and it should be in your report, I think,
10 particularly in view of the 50 per cent decrease
11 in the statistical duration of these cases and
12 give us a breakdown on that and would you do on
13 a comparative basis with last year, albeit under
14 the old system? Last . you have reported
15 statistically two extraordinary results as I
16 understand it and that is a reduction of your
17 average jurisdictional duration by 50 per cent,
18 almost right on 50 per cent and by non-jurisdictional
19 and it is even more extraordinary, something
20 around 80 per cent. Now I am not sure there is
21 one single reason that you have identified I think
22 in your words generated by a new computer system.
23 Help us understand what it is about your new
24 computer system that reduces those durations so
25 substantially?



1 MRS. MESLIN: There is a two-fold
2 answer to the question. The computer system of
3 course allows us to track more closely complaints
4 in terms of time but you can't say that in a
5 vacuum. What we have begun to do is set internal
6 time standards for the way in which we expect
7 responses to occur both internally and externally
8 by our staff. When we say we want something done
9 on a case with a three-week limit we generate
10 computer data that our senior people get to be able
11 to say to their staff -- I get a report every
12 month where the staff must tell me why they have
13 gone over a timeframe.

14 Now I think what happens in that
15 case is you have staff that receive a reminder
16 every week about cases that they haven't looked
17 at that may just have been awaiting something. So
18 the process has been eclipsed and I think that is
19 the best reason I can give you because they set
20 different standards.

21 MR. BELL: That is organization
22 and operation in your office. You are monitoring,
23 whip-cracking the process, but is there anything
24 about that program now that shuts down the time?

25 MRS. MESLIN: I don't understand.



1 MR. BELL: Earlier than it did before.
2 The computer pulls it out and solves it based on
3 the criteria . Have the criteria changed between
4 the old program and the new program to shut the time
5 down?

6 MR. MILLS: One of the things we
7 did was we were not opening files on informal
8 sorts of complaints and at the beginning of 1985 we
9 started opening them ...

10 MR. BELL: Including information
11 requests?

12 MR. MILLS: Yes.

13 MR. BELL: You went back to the
14 old system?

15 MR. MILLS: Now we are keeping
16 track of exactly -- the opening dates.
17 Last year we didn't keep track of exact opening
18 dates and exact closing dates and at the expiration
19 of 30 days -- this year we are keeping track
20 very accurately in fact of the duration from the
21 placing of a formal complaint, one day or two
22 days.

23 MR. BELL: Let me try to understand
24 that. Under your old system there were certain
25 things your office was doing, you weren't opening



1 files and there were administrative reasons for
2 that. There were things like information requests,
3 there may have been some others, but let's stick
4 to that. Statistically they were a high percentage
5 of the total matters brought to the office and
6 I think also statistically it didn't take your
7 office very long to do those things. They were
8 never part of the data base before wherein the
9 duration was calculated?

10 MRS. MESLIN: Yes, they were.

11 MR. MILLS: The 30 days was calculated .

12 MR. BELL: What you have done now is
13 two things. Now you are opening those things on
14 files and therefore you are accurately tracking
15 the length of time. Can I take it that what you
16 have found is that substantially all of those things
17 are being done in less than 30 days so you are getting
18 the benefit of a less than 30-day average
19 duration? Can you give us a feel to what extent
20 does that computer assist in the 50 per cent
reduction in the duration?

21 MR. MILLS: I could verbalize it
22 but that would not be my function.

23 MR. BELL: Do you want to take it
24 under advisement? Can you let us know that? You
25 see what we are trying -- to call a spade a shovel --



1 what I am trying to distill is what is contributing
2 to what It is one thing to say the duration is
3 reduced by 50 per cent but merely to have changed
4 your computer program, you get all kinds of computer
5 programs to do that. I am more interested in
6 determining as accurately as we can the extent of
7 your administrative -- the whip-crack, the three-week
8 time limit you have got to get something done. If
9 you can get those identified and have the stats
10 before you as well.

11 MRS. MESLIN: I think there is another
12 point that is relevant, Mr. Bell. I feel that
13 what was happening before was an averaging out. It was
14 not a true picture of what we were doing and I think
15 it is more important for us in a management sense
16 and for the Committee in understanding and assisting
17 us to get as close a picture of what we are actually
18 doing.

19 Now we are always going to have
20 trouble over the next year or so doing comparative
21 things for you because we are setting, you know,
22 the new warrant and I think you are going to find
23 that we of course are doing less of those informational
24 requests. Time is much less, but I also think you
25 have to look at if you are going to weigh it, how



1 much less time we are completing jurisdictional
2 complaints. To me that is almost the essence of
3 the organization.

4 MR. BELL: You are right and that
5 is why I asked the question. Just on that point I
6 take it if we look at those complaints according to the
7 statistics on a comparative basis the criteria in
8 both of the programs, the old and the new one,
9 will not make a material difference but the
10 comparison would be a pretty accurate one or a
11 pretty meaningful one. Okay. I have got a lot
12 more, Mr. Chairman, but I believe with respect
13 this is not the place for it. We have other times
14 in September. I would like before we adjourn to
15 have any appropriate member of the staff to give the
16 Committee some specific description of what
17 your Thunder Bay office is like and perhaps you
18 could tell us what happens when a complainant comes
19 in.

20 DR. HILL: Michael Dunnill our
21 area manager is just waiting to do that. It is
22 quite apropos because we are in Thunder Bay and
23 he will give us a one-hour discourse on that matter.

24 MR. BELL: One minute. Did you
25 say one minute?



1 DR. HILL: I think a little levity
2 is needed at this point.

3 MR. DUNNILL: Mr. Chairman, I should
4 mention first of all that if you have any concerns
5 about the long-windedness of the Preacher's son
6 remember now you have got a Preacher here and you
7 are probably in a worse situation than ever.

8 First of all, I think the most
9 important thing I think I can tell you about the
10 Thunder Bay operation is the fact that it was
11 the first regional office created so we are now
12 in our eighth year. I am in my tenth year with
13 this office. We are in the eighth year of operating
14 a regional office here. We were set up with the
15 first shift to see what happened, to see how it
16 would float and as we have seen particularly under
17 Dr. Hill we are really moving out regionally.

18 We went into West Arthur Place,
19 to local residents considered to be a rather
20 prestigious highrise, if you call seven floors high-
21 rise, office building in Thunder Bay. As a matter
22 of fact it had one of those marvellous views of
23 the City of Thunder Bay. I was on the top floor
24 and it was a nice office, a beautiful office, but
25 I think people felt somewhat intimidated in coming



1 into that office. If you analyzed the type of people
2 who came to see us, many were people with Workers'
3 Compensation Board complaints. In this area
4 particularly we are talking about people whose
5 background is in mining and forestry. Many of
6 these people just do not associate with the sparkle
7 of granite and the polished tile floors, but I
8 think everybody can relate to walking in off the
9 street into whether it is Kresge's or it is into
10 a men's wear store or ladies' wear store. So what
11 we did was as our lease was drawing to a close
12 we looked for a vacant store front and because I am
13 a native of the area although I have been gone
14 for a number of years, did a little bit of research
15 and realized that the most vital of the two downtown
16 cores and that is the peculiarity of Thunder Bay of
17 course with two downtown cores, the most vital
18 at the present time anyway is in the old City of
19 Port Arthur, and so we looked down there.

20 Well, once again you have got
21 two situations you can look at for store fronts and
22 you can go to the very main street between Eaton's
23 and all the banks or you can go one block off Main
24 Street which I say is like putting the store front
25 on Yonge Street or putting it over on Church Street



1 in relating that to Toronto. The walkby traffic
2 is an awful lot greater on Yonge Street than it
3 is on Church.

4 So we chose to go right on the
5 very Main Street. Many people have said we couldn't
6 have picked a better location. We are three doors
7 down from Eaton's. We are -- I think we are actually
8 surrounded by five of the chartered banks. We are
9 two doors down from the entrance to the large
10 indoor Thunder Bay Kiskus Mall in downtown Port
11 Arthur, part of the old urban renewal and it has
12 been absolutely amazing what has happened.

13 We were told, first of all, we
14 would probably get a 25 per cent increase in traffic.
15 That is what we were told. As Dr. Hill mentioned
16 this morning, it is actually 93.8 per cent increase
17 in the traffic and that is tremendous. What has
18 caused it? It isn't all drop-in trade. I think
19 just being on the Main Street with our sign out
20 there "Ombudsman of Ontario" and the fact that the
21 media latched onto this, I think this has been
22 what has brought the people and as the people come
23 into my office I ask them why, what prompted you?
24 We are finding two things.

25 One is first of all the location, the



1 higher profile and secondly, the word of mouth
2 referral from people who had already dealt with
3 our office. They dealt with us they feel with
4 some success.

5 Just as an example I noticed
6 Dr. Hill used the situation today about the nurses
7 at the home for the aged and the Inflation Restraint
8 Board. About two months ago a gentleman came into
9 my office with a complaint and I asked him "What
10 brought you here?" And he said "Well, my wife
11 was one of the nurses" and he came representing his
12 Indian band and ultimately we satisfactorily
13 resolved that complaint too.

14 But, if I can further expand on
15 Dr. Hill's quoting of some of the figures for
16 Thunder Bay, these figures I am using are starting
17 with March 1st, the reason being April 1st is
18 fiscal but March 1st is the day we moved into the
19 storefront and these figures are comparative March
20 1st, August 27th. I took the last figure as I
21 closed the door last night at five o'clock.

22 March 1st - August 27, 1985 as I
23 have mentioned we went to 191 complaints. This year
24 566, an increase of 93.8 per cent. Of those 107
25 last year were jurisdictional. 179 this year. That



1 is a 61.7 per cent increase in jurisdictional
2 complaints. I have broken those jurisdictional
3 down into two groups, by the way, because I think
4 that I talk about jurisdictional organizations,
5 persons who come in to us to complain against the
6 Workers' Compensation Board which is a jurisdictional
7 organization but when they have exhausted all their appeals
8 it is not a jurisdictional complaint. I think it
9 is one thing to educate the public as to the
10 organizations over which we have jurisdiction and
11 it is another story again to go out there and
12 re-educate them as to when those complaints are
13 jurisdictional, but of those a year ago of the
14 107, 69 were what we might call premature and
15 38 were mature complaints. This year 125 were
16 premature, 54 were mature complaints.

17 So we do see an increase all across
18 the board of non-jurisdictional, 138 a year ago were
19 non-jurisdictional. This year 273. Last year
20 information requests amounted to 46. This year to
21 114. I attribute that mostly to the fact that we
22 are storefront. More people are dropping in and
23 a number of people just drop in and say "What is an
24 Ombudsman and what are you people all about?"
25 I think the thing that struck me most in this whole



1 survey that I have undertaken over the past week
2 or so in preparation for your visit here has been
3 that we have noticed an increase all across the
4 board.

5 In other words, it wasn't just
6 information requests or it wasn't just people coming
7 in and complaining about a used car dealer. People
8 were coming in and complaining all the same types
9 of complaints we had before and every one of them
10 is up in that proportion.

11 Now when we get into the jurisdic-
12 tional side of things, I would suggest the greatest
13 increase has been in complaints against what I call
14 social service agencies such as the Ministry of
15 Community and Social Services, Thunder Bay District
16 Counselling Office, and the local Lakehead
17 Psychiatric Hospital. Many of the day people who
18 are on day passes from the Lakehead Psychiatric
19 Hospital take the buses and they get off right
20 almost in front of our office and walk up and down
21 the street and they see us and they come in with
22 their problems. I don't think we were getting those
23 people before. There were too many bus transfers
24 to get them over to this side of the City and then
25 as I say they didn't go in this polished building.



1 If I had any misgivings at all
2 about going storefront they have certainly
3 vanished. My only problem, of course, is with the
4 increase in work. It means I don't get a chance
5 to look out at the view I had before, but ...

6 THE CHAIRMAN: But you get to shop
7 at Eaton's.

8 MR. DUNNILL: I get to shop at
9 Eaton's which can always be an advantage I guess.
10 One of the big things I would suggest not only
11 for this office, this office I think has got
12 to be more and more storefront in all our locations,
13 but I think if I can say this, maybe I am stepping outside
14 my bounds, but I think all of the agencies and
15 Ministries of the government that deal with people,
16 people oriented offices of the government have
17 got to get out of what we call these mini-Queen's
18 Parks and get onto the street like the workers advisor
19 has done. He has moved out of the mini-Queen's
20 park and onto the street and he is now in a mall
21 on Memorial Avenue.

22 MR. PHILIP: Where is the Human
23 Rights Commission?

24 MR. DUNNILL: It is in a mini-
25 Queen's Park. In addition to the storefront, the



1 other big thing that has happened in the past
2 six or seven months has been the community outreach
3 program. Primarily what we are doing is going
4 out into organizations and I guess we can
5 say we are trying to establish within those organi-
6 zations listening posts. We are trying to identify
7 those organizations which have people coming to
8 them for counselling, for guidance because many
9 people who seek counselling whether they are going
10 to an organization such as the Lakehead District
11 Association for the Mentally Retarded or the
12 Lutheran Community Care Centre, those people are
13 going to these organizations because they have a
14 problem and we are trying to get into those
15 organizations to remind them that if the problems
16 they hear about are problems that we can deal in
17 any way, shape or form with the provincial government
18 then send those people to us. We just may be able
19 to help them. We are doing this not just here in
20 Thunder Bay. We are going out into all the small
21 communities because many of the smaller communities
22 have what they call community resource workers.
23 Many of those small communities have a public health
24 office. They will have a probation/parole office.
25 If we talk to these people and remind them that



1 our office is available and that we continue to
2 accept collect phone calls from these people in the
3 small communities in order to really give our service to
4 everybody on an equal basis, I think then the profile
5 of the Ombudsman's office will be enhanced throughout
6 the north.

7 You people have seen the vast
8 interest that we have. We have got to go out.
9 Not the way we did before, although there is value
10 to those hearings, but I think we have to establish
11 people in Armstrong don't just want to complain
12 on September 22nd. People in Armstrong want to
13 complain a lot of the time. We have got to get
14 people in Armstrong who know about our office
15 to take those people who are having problems and
16 direct them to us so that we can assist them.

17 MR. BELL: Mike, could you give
18 us some sense of your office's involvement with
19 native groups in the area that you serve?

20 MR. DUNNILL: Native groups, yes.
21 We have, of course, many of the native organizations...

22 MR. BELL: I meant the native
23 communities.

24 MR. DUNNILL: Native communities,
25 fine. We endeavour to visit each reserve if at all



1 possible and we must remember there is a tremendous
2 cost to get up here but if at all possible
3 we endeavour to visit them at least once a year,
4 but in order to cut back on that cost, many of
5 the times we will go on the scheduled airlines
6 but we will take a week or ten days. In other
7 words, once you get up there the initial cost
8 of getting up to Big Trout Lake, once you get there
9 you can stay for a week and go up one day to
10 Muskrat Dam and another day to Bearskin Lake and
11 another day over to Wanup and another day over
12 to Kasabonika and another day down to Sachigo.

13 This is the way we try to save
14 money and yet serve all of those communities.
15 Those that are accessible by road of course
16 they do get us at least once a year, but those
17 that are not accessible by road we try for once
18 a year. Sometimes we get lucky and they come
19 into town to see us there. Allan Pelletier who
20 is here of course sees the chiefs when they do come
21 into town. Meetings of the Mishnabe nation
22 and their chiefs come to town and Allan comes
23 up and meets with them, but I think that we have
24 given the function of approaching the native
25 people a high priority. I have a certain bias I



1 guess toward native people myself having worked
2 with them since 1959, but we have always kept
3 that as a high priority and I think I can honestly
4 say with no disrespect meant to the previous
5 Ombudsmen that Dr. Hill has probably encouraged a
6 higher priority to native people than had been
7 encouraged in the past.

8 MR. BELL: Do you see the need
9 to travel to those communities more frequently than
10 once a year?

11 MR. DUNNILL: Some of them, yes,
12 some of them, no. That may sound an astounding
13 answer, but I am suggesting that for example in
14 communities like Sandy Lake which is the largest
15 community, native community in the north, if it
16 was accessible by road such as Schreiber or Terrace
17 Bay or Atikokan, we would probably go at least
18 twice a year, but because of once again the almost
19 prohibitive cost of going into these communities
20 we try to do it once a year, but what I will do
21 of course is spend at least a full day there.

22 MR. BELL: When you go to these
23 places how are you received?

24 MR. DUNNILL: At first I think we
25 were received with a certain amount of dubiousness



1 on the part of the native people "Here comes
2 another white man who is going to save us."
3 I think we are received well now. As a matter
4 of fact I had the pleasure of reporting that to
5 Dr. Hill last November in my memorandum telling
6 him that was one of the things that was said,
7 "You people are always welcome to come back,"
8 which was stated to myself and others "You are
9 always welcome to come back." When I go up there
10 now and having been going up there since 1977
11 my first year up there, those people know who
12 I am. You may recall, Mr. Bell, I guess you
13 are the only one here when I made that presentation
14 in 1977 and '78, we said that was one of the things
15 we were aiming for was continuity of the same
16 person going back if at all possible, the same
17 person each year would go back, we wouldn't keep
18 changing people because the native people had
19 to grow to trust us and if you can establish
20 a trust with an individual and that individual can
21 deliver on that trust...

21 MR. BELL: Do you believe you
22 have that trust now?

23 MR. DUNNELL: I believe I
24 personally have and I believe this office has.

25 MR. BELL: Dr. Hill, not to presume or



1 predetermine to what extent your officers should
2 travel to those communities we recognize the
3 cost and recognize your budget success, have
4 you considered or would you consider an arrangement
5 with one of the Ministries that flies into those
6 communities regularly? Planes go there and it is
7 common knowledge the planes are never full. As an outsider
8 would seem to me it would be a reasonable proposition
9 for something to be worked out at minimal if any
10 cost to your office.

11 DR. HILL: I certainly -- one of
12 the things Harvey Savage has travelled north
13 extensively as well as Michael. We have been
14 talking about piggy-backing on another plane which
15 is essentially the same. We want to do that and
16 we are going to look at that possibility. I think
17 Harvey is already taking a look at that to save
18 some money because we have to do it.

19 MR. BELL: For example, the
20 communities, for the courts visits, are going on
21 three planes, one for the judge, one for the Crown
22 and one for the defence. That is something the
23 Law Society has initiated for the appearance of
24 impartiality. I know each one of those planes
25 is not full.



1 MRS. MESLIN: I think that
2 is an area we have to look at. I think suggesting
3 the MNR possibility is not a good idea.

4 MR. BELL: No. Somebody overruled
5 me on that.

6 MR. DUNNILL: Might I add one thing
7 to that? Because of Mrs. Meslin says with regard
8 to the Ministry of Natural Resources we did
9 have, and I am not faulting the Ministry in
10 any way, shape or form on the statement, we did
11 have the situation on one that was accessible
12 by road where we were to do an interview with
13 a complainant who had a complaint against the
14 Ministry and the Ministry officials wanted to
15 accompany us to see if they could resolve the
16 complaint right on the reserve. The officials
17 on the reserve would not speak to us until the
18 officials of the Ministry had left the reserve.

19 MR. BELL: I don't blame them.

20 MR. DUNNILL: I think it is the
21 old Caesar's wife.

22 DR. HILL: I think we are
23 going to have to look at extending those visits.
24 Harvey and I have been talking about it. It started her

25 MR. SAVAGE: I think we have to do



1 more. We have looked at all of the possibilities
2 and Ian Cameron's suggestion yesterday we pursue
3 this, but I think more than that you need somehow,
4 we have to put our heads together on this, it is
5 the quality of what we do that is really not
6 important. Not even a one-time visit or a two-time
7 visit because a lot of times between those visits
8 they forget what you look like and you get all kinds
9 of problems and they forget a lot of things...

10 MR. BELL: They forget a lot less
11 if you go up two or three times a year.

12 MR. SAVAGE: Absolutely. I am
13 suggesting we need quantity but we need also to
14 develop some kind of a presence always there and that is
15 why we are exploring the listening post concept to
16 identify a key person inside the native community,
17 it could be the administrator or social worker who
18 would be willing to be our, sort of, lightning rod
19 or our flash point for trouble, always there, so
20 we could provide various things. The frequency of
21 visits with developing a presence I think would
22 even be better.

23 DR. HILL: The regional plan,
24 that is just a fraction of that plan.

25 MR. BELL: Thank you, sir. That has



1 been very helpful. I don't know if the Committee
2 has any questions.

3 MR. PHILIP: Since Allan informs
4 me it is one bands or two bands own a plane?

5 MR. PELLETIER: The only one I am
6 aware of is Big Trout Lake who have their own
7 plane service.

8 MR. PHILIP: It might be worthwhile
9 exploring whether you can make arrangements with
10 them since it is their interest to have you there
11 and you could fly in with them when they a vacant
12 space. I don't know whether that is possible.

13 I had a couple of questions concerning
14 the premature complaints, do you find people who
15 have premature complaints have some help to seek
16 capacity from some other source?

17 MR. DUNNILL: I think there are.
18 From our office you mean?

19 MR. PHILIP: No. The people that
20 you list as premature complaints are they at that
21 point in time when they come in usually receiving
22 some kind of assistance with their complaint from
23 another source? In other words, are they coming
24 in and at the same time receiving assistance from
25 an MPP or from a legal aid office or some other



1 source?

2 MR. DUNNILL: I would suggest,
3 I couldn't give a figure on that, Mr. Philip,
4 but it is as much as 25 per cent are receiving that
5 help. They are going either to the legal clinic
6 or they have already touched bases with the office
7 of the workers' advisor or something of that nature.
8 Many are coming and don't know where to go.

9 MR. PHILIP: There may be a level
10 2 of a complaint handling it on their own with the
11 WCB and it is not quite your stage so you can't do
12 anything. Do you refer them to legal aid clinics?

13 MR. DUNNILL: I refer them to the local
14 legal clinic and to the office of the workers' advisor.
15 I will give them those two at least. Most of them --
16 I should say most of them -- many of them have
17 already gone to their MPP. I must say this for the
18 two local members they have a very good track
19 record with regard to dealing with Workers'
20 Compensation. We also have if a person belongs to
21 a Union send them to their union, but most people
22 who belong to a union have already taken advantage
23 of that resource.

24 MR. PHILIP: Are you saying that
25 these people that have some kind of advocate working



1 for them are simply coming to you for a second
2 opinion?

3 MR. DUNNILL: I think they come to
4 us because they are not too sure when we can get
5 involved.

6 MR. PHILIP: They are not just
7 shopping around for somebody else to see whether they
8 can ...

9 MR. DUNNILL: Maybe they are but
10 I think they are just trying to find out is there
11 something else they can be doing? They become
12 frustrated with the appeal process. They just don't
13 know -- is there some way we can speed things up?

14 MR. PHILIP: Of the non-jurisdictional
15 complaints that are not federal and are not private
16 enterprise complaints which make you the most
17 frustrated in your inability to deal with them? I
18 know you are not going to be around for the estimates
19 when we are going to deal with this whole issue and
20 I would like to have kind of a grass roots feeling.
21 Are there cases where you say gosh this guy has a
22 good complaint but I have got no authority over it
23 and it is not the federal government. None of this
24 business about there should be a federal ombudsman,
25 but if so what are they?



1 MR. DUNNILL: Probably I don't
2 know other than Mr. Bell or Catherine Evans too,
3 probably people who have problems with their
4 lawyers.

5 MR. BELL: Boy, we are really getting
6 it this week.

7 MR. DUNNILL: It is unfortunate
8 but it is true. There are many, many people who
9 feel that lawyers either drag their heels or charge
10 too much and that is -- I am sorry, Mr. Bell,
11 Miss Evans, but that is a very, very common
12 characteristic.

13 MR. PHILIP: What would you do in
14 a case like that? Do you write a letter to the
15 lawyer saying "I can't interfere in your client
16 relationship, but Mrs. So and So has phoned your
17 office five times and hasn't had a reply and would
18 you call her "?

19 MR. DUNNILL: Generally speaking
20 if a person comes in like that with a complaint
21 against a bill of course it is very simple. We
22 tell them all about taxing and tell them about
23 how they can have the lawyer's bill taxed. If it
24 is a complaint about he drags his heels, she is
25 just not giving the service I think she should be



1 giving, we remind them of course first of all that
2 no one is ever duty bound to stay with one lawyer
3 but we will also advise them that if they really
4 feel the lawyer is guilty of some sort of malpractice
5 or just not co-operating, not doing anything at all,
6 if they feel the lawyer is a deadbeat, why not
7 try the Law Society of Upper Canada? We don't
8 write the lawyer. I find it very difficult writing
9 the lawyer.

10 MR. PHILIP: Did you ever know the
11 Law Society of Upper Canada to act against a lawyer
12 unless they found the lawyer to have his hand in
13 somebody's pocket?

14 MR. DUNNILL: No.

15 MR. PHILIP: You are beginning to
16 sound like Bob Nixon. Are there other non-
17 jurisdictional complaints -- I don't want to ask
18 you or feed you questions I am hoping to get
19 the right answer for but are there other non-
20 jurisdictional complaints that are under provincial
21 authority that frustrate you locally because I know
22 what they are in Metropolitan Toronto, but what
23 are they up here?

24 MR. DUNNILL: There is a certain
25 frustration of course as regards -- a great



1 frustration as regards education which although the
2 Ministry of Education may be within the jurisdiction
3 of the Ombudsman the local School Board problem has
4 a relationship to -- that is a very, very difficult
5 situation. Similarly although we don't have that
6 many complaints against the organization, but you
7 run into the same set of situations with regard to
8 the Conservation Authorities. They seem to receive
9 a great deal of funding from the government. It is
10 to try to get the complainant to understand we
11 don't have that jurisdiction and we may sympathize
12 a great deal with the problem, but ...

13 MR. PHILIP: What about children's
14 aid societies, do you get complaints about them?

15 MR. DUNNELL: A few, but very few.
16 I don't think we have three in a year.

17 MR. PHILIP: What about hospitals?

18 MR. DUNNELL: I don't think we have
19 two or three a year here in Thunder Bay. Similarly
20 nursing homes or homes for the aged. I must say here
21 in Thunder Bay they are not problem areas. I realize
22 they are in some others.

23 MR. PHILIP: Thank you.

24 THE CHAIRMAN: Any further
25 discussion?



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If not, the Committee is adjourned
for lunch.

---Adjournment at 11:57 a.m.

Certified Correct

S. Shambleau

S. Shambleau, C.V.R.

STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1983-84
REPORT, COMPLAINT OF MR. R
ANNUAL REPORT, OMBUDSMAN, 1984-85

TUESDAY, SEPTEMBER 23, 1986

Morning Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

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Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Miller, G. I. (Haldimand-Norfolk L) for Mr. Newman

Smith, D. W. (Lambton L) for Mr. Mancini

Clerk: Decker, T.

Clerk pro tem: Deller, D.

Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Environment:

Crocker, D., Counsel, Legal Services Branch

From the Office of the Ombudsman:

Zacks, M., General Counsel

Hill, Dr. D. G., Ombudsman of Ontario

From the Ministry of Northern Development and Mines:

Stepinac, S., Counsel, Planning and Administration Division

From the Ministry of Consumer and Commercial Relations:

Gibbons, V. A., Deputy Minister

Rush, J., Executive Director, Business Practices Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

September 23 1986

The committee met at 10:10 a.m. in room 203.

ANNUAL REPORT, OMBUDSMAN, 1983-84
(continued)

Mr. Chairman: Now we have representatives from all three parties.

Mr. Bell: The clerk has distributed to you each probably an unprecedented brief in the history of this committee. It has got to be the briefest brief that I have ever been associated with, and it is due in no small measure to the efforts of Dr. Hill and his staff; it is trying to put this committee out of business.

If you would turn to the index--I know Debbie has given you also an amended agenda today--I would like to spend a couple of minutes telling you what we are going to do and where we are going to go.

The lettering and the numbering system in the index as usual corresponds to the tabs in the material. Today, you are going to deal essentially with two areas. Three of the areas are covered in A; that is, recommendations contained in previous committee reports which for some reason have not yet been implemented by the governmental organization in question, and to that end, representatives of the governmental organizations will be attending before you today with an explanation of why there has not yet been an implementation. You will also hear from Dr. Hill and his people on their position in that regard.

You are going to deal with the following three items in this order: A-3, the Ministry of the Environment; A-4 the Ontario Northland Transportation Commission; and A-1, the Ministry of Consumer and Commercial Relations. The first one may well be the longest in terms of discussion.

Then this afternoon, we hope right at two o'clock, you will be meeting with the public trustee, Mr. Comiskey, in respect of certain comments Dr. Hill made in his latest annual report and as he expanded on those comments in the hearings in Sioux Lookout and as he has further expanded. If you look to tab B you will see a letter from Eleanor Meslin to me dated September 10, in which Mrs. Meslin has highlighted the most critical areas wherein Dr. Hill and his staff have had the difficulties with the public trustee. I believe the trustee has been given a copy of this letter as well as transcripts of the Sioux Lookout hearing and Dr. Hill's report.

So he is fully aware of the concerns and should be ready to discuss those concerns immediately after you have heard from Dr. Hill. It is hoped the discussion this afternoon can resolve the difficulties. If not, members of the committee, you may have to consider appropriate recommendations in your report to the Legislature this fall.

That is today's work. Tomorrow, you will be doing everything else. If you look to the second page of the agenda that Debbie has prepared, you will be dealing with--in terms of the index in the brief--item C, "Undertakings Outstanding Respecting the Northern Ontario Hearings." In that regard, Dr.

Hill and Ms. Meslin are fully prepared with additional information, some of which is statistical, which we will discuss tomorrow morning.

Next, there have been some recent developments in regard to item D of the index, "Amendments to the Ombudsman Act," which you will hear explained.

Just as an alert, you may have to give further specific attention to a previous recommendation this committee made, which I believe was adopted by the House, although we have to check that. That is, when the bill amending the Ombudsman Act is tabled from the Legislature after it receives first reading, it will be referred to this committee for clause-by-clause review and not to another one, particularly the standing committee on administration of justice. It may well be necessary to have a reconfirmation of that arrangement.

The last item tomorrow morning is that Dr. Hill will be tabling with you, not for discussion but for explanation, his report on the expansion of the jurisdiction of his office, a report which you discussed with him last January. It was agreed that he would prepare this effort before you embarked upon any detailed review of that issue. It will be necessary for you, I believe, to fix some period later in the fall, or maybe by the January recess, to consider the issue in more detail.

In the afternoon, the assistant deputy minister, administration of the Ministry of Education, Philip Adams, will be in attendance, and it is hoped the one holdover matter from item A--that is, A-2--can be dealt with in short order.

The remainder of the afternoon will be the allocated time for the Ombudsman's estimates. If time permits in the morning's exercise, you might want to start the estimates earlier to make sure you get, if necessary, the three hours in; but we can deal with that tomorrow morning.

The only matter not dealt with in my index is item F, "Communications from the Public." In that regard, there will be a subcommittee meeting some time today to consider those items on the agenda, and at some appropriate time in the next two days, the subcommittee will report with its recommendations so you can deal with that.

With that introduction, if you will turn in your brief to subtab A-3, I will briefly review the material for you before we ask Mr. Crocker to introduce himself formally.

As you know, after the Ombudsman references an outstanding recommendation in his report, I write to the minister involved on your behalf, asking for a report and/or explanation of why the matter is still outstanding. In this case, the letter was written to the Honourable Jim Bradley on July 21, enclosing the relevant portions of the Ombudsman's report.

You will recall in this case some two reports ago of the Ombudsman's and two reports ago of yours, pursuant to the procedures set up under the ministry, an adjudicator was appointed to determine whether certain responsibilities existed as between the ministry and the complainant, the complainant in this case being a contractor.

10:20

The issue that the Ombudsman brought to the committee in his recommendation was whether the ministry had the authority under the relevant legislation to pay interest on a claim that was ultimately paid by the

ministry, in this case to the complainant. It was the Ombudsman's view, by his recommendation, that the minister does have the jurisdiction to award interest in these circumstances and that he ought to consider the merits of the complainant's claim in the context of interest as due.

You agreed with the thrust of the Ombudsman's recommendation, and in recommendation 2 of your 12th report, you recommended that the Ministry of the Environment accept in principle that the crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract and that, in the specific terms of this case, the minister consider the merits of the complainant's claim for interest owing on the principal amount that was paid and formulate a decision on whether to pay the claim in this case.

What has happened in the interim, in fairness to the ministry, is that it has accepted in principle the thrust of your recommendation that interest can be paid in appropriate circumstances and that yes, this case will be considered on its merits. What have apparently broken down are the mechanics leading to a consideration of the merits, etc. That is why you will see, starting at the fifth page of this material, a letter dated August 11, to me from Mr. Jackson of the ministry, which encloses a copy of a letter to Michael Zacks of the Ombudsman's office, which attaches a certain submission to arbitration, being what the ministry believed to be the vehicle to assess the merits of interest in this case.

With that introduction, I am going to leave it to others, specifically Mr. Crocker and Mr. Zacks, to distil further the reasons for which the matter has not been implemented yet. Before I ask Mr. Zacks or Dr. Hill to comment, Mr. Crocker, for the record, would you formally introduce yourself to the committee?

Mr. Crocker: Ladies and gentlemen, my name is David Crocker. I am one of several counsel to the Ministry of the Environment.

Mr. Bell: Mr. Zacks, will you be speaking to this matter on the Ombudsman's behalf?

Mr. Zacks: I will be speaking to it, but first Dr. Hill has a brief opening remark to make.

Dr. Hill: Mr. Chairman, members of the standing committee and Mr. Bell, I have a very brief comment, after which Mr. Zacks will comment further.

Our efforts to resolve this complaint have involved a lengthy and difficult process. I finally believe the complaint was resolved as a result of the committee's recommendation that an independent adjudicator be appointed to assess the matter of whether interest was owed to the complainant.

The ministry has presented a submission for arbitration that both the claimant and the Ombudsman find unacceptable. Our understanding of the committee's recommendation to the Ministry of the Environment is that there be a full and complete adjudication to finally and fairly decide the issue. The submission, in my opinion, does not do this.

For your information, I am distributing a copy of the submission--I think you have it--and our letter to the ministry outlining our concerns.

That is all I have to say. Mr. Zacks will carry the balance of the case.

Mr. Zacks: When we received the submission for arbitration, it was sent to the complainant and its counsel. They had some concerns about the process, which the Ombudsman shares.

Essentially, we feel that to bring an end to this process there has to be an adjudication that permits both parties to present full evidence on all the issues and have the adjudicator decide the matter. We think it would be counterproductive and prevent a fair and final determination if there were preconditions on the type of evidence that could be submitted and if the way of calculating interest is predetermined, with ceilings and interest rate determinations.

Essentially, as we have indicated, the matter should be open. The adjudicator should have the discretion to accept whatever evidence he or she believes to be relevant, and there should be an opportunity for the parties to make full representations on the issues they believe are significant and relevant.

Mr. Bell: Sorry, Mr. Zacks; we were dealing with a matter of--

Mr. Zacks: Would you like me to repeat that?

Mr. Bell: Yes. We are dealing with the third item on the agenda this morning.

Mr. Zacks: As Dr. Hill indicated, this has been a very long process, and we were getting close to the end of the tunnel. We felt there should be a full hearing by an arbitrator or an adjudicator who would have the authority to hear all evidence he or she believed to be relevant. Evidence on the facts in the case, on the contracts, on what the appropriate interest rate would be and who would be able to determine the appropriate amount of interest that ought to be paid, if any, should be left in the hands of the adjudicator and not be predetermined in any way by the parties. This is the only way there could be a fair and final determination.

The other point is about the cost. One part of the submission indicated that each party should be responsible for the costs of the adjudicator. In fairness, the Ombudsman's position is that, although the parties should be responsible for their own legal fees, the costs of the adjudication should be borne by the ministry.

Mr. Bell: To tie it down more specifically, the submission to arbitration is found immediately after Mr. Jackson's letter to you of August 11. Members of the committee might wish to turn to that submission. It is four pages in length. Do you have it Mr. Zacks?

Mr. Zacks: I do.

Mr. Bell: This was a submission prepared by the ministry as being acceptable to it on the extent of the authority and discretion given to the adjudicator on these issues. Is that correct?

Mr. Zacks: Yes.

Mr. Bell: Specifically, if you turn to the second page of the submission, does the complainant, through your office, take issue with item 9? Is that the provision that requires the adjudicator to deal with it in written submissions rather than a hearing with viva voce testimony?

Mr. Zacks: That is correct.

Mr. Bell: Obviously, items 10, 11 and 12 apply as well.

Mr. Zacks: Yes.

Mr. Bell: Do you take issue with 13?

Mr. Zacks: Yes.

Mr. Bell: Do you believe that fetters the adjudicator's discretion on the quantum of interest to be awarded should he decide to award interest?

Mr. Zacks: Yes.

10:30

Mr. Bell: Is there any other part of it? The cost aspect?

Mr. Zacks: We take issue with 14 as well. We think the calculation of interest should be in the power of the adjudicator, as well as all other issues to be determined by him or her.

Mr. Bell: Have you considered the law on the extent of an adjudicator's discretion to award interest?

Mr. Zacks: My understanding is that if it were in the submission, he would have the authority to do so. He certainly had authority in the initial proceedings under the public creditors payment legislation. That was part of it.

Mr. Bell: What limits, if any, were imposed on the adjudicator in those circumstances?

Mr. Zacks: There were no limits. My recollection of the adjudication is that when interest was argued in the adjudication, the adjudicator himself determined that he did not have the authority to pay interest. It was agreed by everyone before this committee that there was authority to pay interest under that legislation.

Mr. Bell: It has always been my understanding that if an adjudicator or arbitrator has authority to award interest, it is limited to the extent of interest that the courts can award under the Courts of Justice Act, that being the prime rate of interest applicable at the month immediately prior to when the claim arose.

Mr. Zacks: That is why we are saying this should be within the discretion of the adjudicator and not be predetermined.

Mr. Bell: You are not saying the adjudicator can arbitrarily impose, for example, 25 per cent interest.

Mr. Zacks: No.

Mr. Bell: Do you have any suggestions of appropriate wording of the submission?

Mr. Zacks: We have not got that far in the process. When we got this

proposal, it was sent to the complainant with a recommendation that it be taken to the complainant's lawyer for discussion. We recently received that and we sent our opinions, our views, plus the complainant's views, to the ministry. Then the committee proceedings intervened, so we have not reached that stage yet.

Mr. Philip: Is there any difference in your views and those of the complainant's solicitor?

Mr. Zacks: No, I do not believe so.

Mr. Bell: Before we ask Mr. Crocker to comment, what difference does it make whether there is an attendance in person or whether the submissions are written? Are we not now dealing with a question on the basis of the evidence that was initially before the adjudicator?

Mr. Zacks: I do not know how much evidence initially got before the adjudicator. Our sense of it is that we are talking as much about a perception of fairness as about the actual legalities of it.

Mr. Bell: My recollection of the facts of this case is that we are talking purely upon a review of a contract. I recall reviewing during that thing whether there was anything expressly set forth in the contract for entitlement to interest on overdue accounts, and without commenting whether there was such a provision, the issue then focused upon whether one could unilaterally impose an interest obligation on another party to a contract. What is there about those issues, if I am correct, that requires viva voce testimony?

Mr. Zacks: As I was saying, given the history of this process and the relationship between the complainant and the ministry, it is important for complainants to have the opportunity to present their arguments before an adjudicator. Doing it by written argument does not really achieve the intention.

Mr. Bell: Give everyone a every fair opportunity to bring forward anything that may be considered relevant?

Mr. Zacks: Exactly. Underlying all of this is the fact that this is the end of the line for everybody. We do not want to see this again. In order to achieve that result and satisfy everybody's expectations, I think there should be this type of process.

Mr. Bell: All right. That is a good point.

On the question of the amount in paragraph 13, I understand it represents the amount that has already been determined the complainant is entitled to by way of principal.

Mr. Zacks: That is right.

Mr. Bell: What is wrong with putting a ceiling on that as a principal amount against which interest may or may not be charged?

Mr. Zacks: There may be more interest owing than the principal. It is a possibility.

Mr. Bell: But that does not affect--what I take this paragraph to

say is, look, the judgement is \$27,730. Now you go and determine (a) whether it is appropriate to award interest on that judgement, and (b) if it is appropriate, you determine the amount.

Mr. Zacks: If that is the interpretation that we have, there is no problem with it. The way it was read by us is that was the ceiling on the total interest payable.

Mr. Bell: No. The wording may require a little tightening up.

Mr. Zacks: If that is the amount on which interest is calculated, I assume--

Mr. Bell: Mr. Crocker is nodding his head saying yes, that is the principal amount identified, and we do not want any arbitrator who will charge it on \$50,000.

Mr. Zacks: Obviously, there is no problem with that.

Mr. Bell: All right, then. That is subject to a little fine-tuning. You continue to take issue with paragraph 14 because that is an attempt to put a ceiling on the interest rate.

Mr. Zacks: It could be three per cent or two per cent as opposed to--

Mr. Bell: You say you want the adjudicator to have the same discretion as arbitrators have do under the Arbitrations Act and as judges have under the Courts of Justice Act in respect to the prime rate charged in the month immediately preceding the institution of the action or the proceeding. Is there anything else before we ask Mr. Crocker to comment?

Mr. Zacks: The cost issue. We will deal with that. In paragraph 16, we do not have any difficulty with the first half of that; it is the second half, "Each party shall pay...one half of the costs of the adjudicator."

Mr. Bell: What happened to the costs in the other proceedings?

Mr. Zacks: I think they were borne by the ministry.

Mr. Bell: Meaning what? The ministry paid the costs of the adjudicator? What about the complainant?

Mr. Zacks: The complainant paid his own legal costs. That was one of the issues in the complaint.

Mr. Bell: But that is not an issue before the committee.

Mr. Zacks: No.

Mr. Bell: Are you saying it should be the same deal as it was last time?

Mr. Zacks: Yes.

Mr. Bell: Okay. All right. That really distils itself down to why should the complainant have to pay one half of the costs of the adjudicator if he did not have to pay that before?

Mr. Zacks: That is right. Yes.

Mr. Bell: Okay. Mr. Crocker, if it is acceptable to you, can we take these in the same order we have been discussing them?

Mr. Crocker: Sure.

Mr. Bell: Mr. Zacks and Dr. Hill say this is a one-last-time effort. There has been no determination nor has there been any suggestion of how the interest issue should be determined, but because it is a last-time effort, why cut the complainant off from an ability if he believes it is appropriate to call evidence through his legal counsel? Something about rules of natural justice rattles around in my head.

Mr. Crocker: I am not so sure the rules of natural justice would prevent written submissions as opposed to oral submissions. Perhaps I can get to that in a second, though.

I think we are absolutely agreed on one thing; both parties hope this is the last time the matter comes before this committee.

My knowledge is strictly restricted to what I gleaned from the file, because I have not spoken to Mr. Jackson about it--he is conveniently in Europe--and I have not really spoken to anybody else about it either, other than very briefly, for about five minutes at the most, to Mr. Khoorshed, the solicitor involved in the original arbitration.

10:40

It is my understanding that the recommendations of this committee in the past--and I think this is the third or fourth time this matter has come up--were that the ministry reconsider its jurisdiction and, if it has jurisdiction, its decision with respect to the payment of interest. It is also my understanding that the ministry did reconsider each time and the reconsideration determined that there was jurisdiction to pay interest. It was decided that interest should not be paid in the circumstances because it was not appropriate, and one of the reasons it was not appropriate was the ministry's view of the determination of the initial adjudication.

I do not know whether you have a letter in front of you in your package of material. I sent a copy of this letter to Mr. Bell's office on Friday.

Mr. Bell: The letter you are referring to is the very last letter in this section. It is from the original adjudicator to Mr. Khoorshed, one of Mr. Crocker's colleagues within the ministry, dealing with the question of what was or was not included in the so-called settlement of \$27,000.

Mr. Philip: Which letter is it?

Mr. Bell: This is the letter of September 10, 1984, from a Michael Heller to Mr. Khoorshed.

Mr. Crocker: Mr. Heller was the adjudicator in this matter and his recollection is that the settlement involved--that is, the dollar figure of \$27,730 set out in paragraph 13 of Mr. Jackson's submission--was arrived at after the claimant, in Mr. Heller's words, was agreeing or abandoning his claim for interest and costs.

Having said that, it seems to me under the circumstances, since the matter has been fully adjudicated once, it makes sense on the narrow issue remaining in terms of conservation of dollars and time of both the parties and the adjudicator to have the matter dealt with by way of written submissions.

Although I am not inside Mr. Jackson's head, I imagine he sent this draft agreement for comments as much as anything else. This was an opening shot. If Dr. Hill's office or the complainant's solicitor had some problems, this was nothing carved in stone. There are all kinds of changes that could be made.

Mr. Bell: We are glad to hear that. We will make some progress this morning.

Can I deal with what you think might have been in Mr. Jackson's head when he prepared this submission as for the written submission? It is for that very reason. It is because of what that narrow issue is that it requires, it seems to me, viva voce testimony. Heller is categorical in his letter.

Mr. Crocker: Yes.

Mr. Bell: I recall the evidence. The complainant through his legal counsel adopts a different view, that the settlement was not an all-inclusive figure. That is an issue I think the ministry at least would like to have tested by somebody's sworn testimony; i.e. the complainant and perhaps his legal counsel. Not to overstate the situation, perhaps the integrity of the process is somewhat under scrutiny.

If the ministry's view is that it was clearly an all-inclusive figure and this is why, and the complainant's is not, that is not an issue you should be determining by paper and ink. Perhaps even Mr. Heller might attend and assist. I am being perhaps a bit rhetorical, but I want you to focus on this, and I am glad to hear you say it is not etched in stone. I will not speak for the committee members. They will have to discuss and express, we hope, their unanimous view, but if we assume the unanimous view is that there should be a hearing, may we take it the ministry will accept that suggestion, and get on to another part of the submission?

Mr. Crocker: Yes, I think that is fair. Having already agreed an adjudication of some kind is in order, the form is not primary.

Mr. Bell: That is right. It might be in order to pause here and canvass the committee members on whether they are of the view that a hearing with viva voce testimony would be in order on this issue, and then we can get on to the other items that concern Dr. Hill and Mr. Zacks.

Mr. Shymko: I have two questions, one to the Ombudsman's office.

Mr. Zacks, in your letter of September 16, 1986, you say on page 2 you have a concern that the arbitration imposes arbitrary limits on the calculation of any interest that may be awarded and you do not believe there should be a ceiling on the amount of interest. Is it my understanding, from your answers to some of the questions from Mr. Bell, that you are withdrawing this comment now?

Mr. Zacks: From what Mr. Crocker said, it was not the intention to

put a ceiling on it. That figure was simply the amount upon which interest had been calculated. On that basis, I do not have any objections to that. I think it would be the proper amount.

Mr. Philip: Before we get into those particulars, why do we not deal with the issue Mr. Bell has brought forward and see if we have consensus on that?

Mr. Shymko: Before I do that, I wanted to be clear.

Mr. Philip: Then we can deal with the particulars.

Mr. Shymko: I wanted to be clear on the documentation we have, because your understanding now and our understanding is that there is no ceiling imposed.

Mr. Zacks: There is no ceiling.

Mr. Shymko: The other question I wanted to ask is to Mr. Crocker with regard to the adjudicator's letter of September 1984 and the ministry counsel's most recent letter. Do you agree that the August 11, 1986, letter from the ministry contradicts the September 1984 letter of the adjudicator in terms of the fact that the claimant did not agree he would abandon his claim for interest?

Mr. Crocker: I am not sure which letter you are referring to.

Mr. Shymko: You told the committee to refer to the September 10, 1984 letter from Mr. Heller, the adjudicator.

Mr. Crocker: Yes.

Mr. Shymko: You made a point that we should be aware that, according to Mr. Heller, the claimant had agreed to abandon his claim for interest and costs.

Mr. Crocker: Yes.

Mr. Shymko: If we look at the letter of August 11 from Mr. Jackson--

Mr. Crocker: I understand what you are saying.

Mr. Shymko: --that certainly contradicts it. The ministry now says in item 13 that the interest should be calculated but that the ceiling on the costs should be \$27,000.

Mr. Crocker: With respect, I do not see any contradiction here. The ministry has bowed to the suggestions of this committee that it reconsider. The ministry has felt throughout all this that the issue of interest was decided as a result of the initial adjudication. However, the committee has asked that the ministry reconsider, and in fact consider having the matter readjudicated. The ministry is agreeing. That is what I think Mr. Jackson's letter of August 11 represents. The ministry is agreeing--

Mr. Shymko: To the adjudicator, who may review.

Mr. Crocker: Yes, bowing to the suggestion of this committee that it be reconsidered.

Mr. Bell: You recall that was implicit, Mr. Shymko, in the committee's recommendations on the 12th report. What has bogged everybody down is the mechanics of it, which is why I was trying to get over the hurdle of written submissions versus live, warm-body testimony.

Mr. Shymko: If I may comment, my position is that we definitely should proceed to a full hearing as a recommendation.

10:50

Mr. Bell: If I can presume that this is the committee's view, then we will go on. I think the other two items are not as difficult to resolve. In fact, one has been resolved already. It is just a question of clarity of wording.

Mr. Crocker, concerning paragraph 13, the only suggestion you might take back is to examine the language and perhaps make it a little clearer that, if interest is to be awarded, it is to be calculated on the \$27,730 only and not on anything more.

Mr. Crocker: Mr. Jackson will undoubtedly take umbrage at my suggestion that he has not made himself absolutely clear, but I will--

Mr. Bell: No, it is not your suggestion. He can take umbrage with me if he wants. It is not your suggestion.

Mr. Crocker: I will suggest it to him.

Mr. Bell: I will shelter you from that.

Mr. Crocker: Thank you.

Mr. Bell: By the way, it should be understood that it is within the discretion of the adjudicator to award interest on a lesser principal amount, on a portion of that \$27,000. It is not an all-or-nothing situation.

Mr. Crocker: Mr. Jackson does say "not exceeding \$27,730."

Mr. Bell: Okay. Let us deal with the cost issue first and get to what I think is perhaps the more difficult one. If the cost arrangement in the first hearing was that both parties assumed their own costs and that the adjudicator's costs were assumed by the ministry, why can this not happen again?

Mr. Crocker: It would be my position, looking at this material in the light of the fact that the matter was adjudicated fully once, that it is the ministry's position, as represented by Mr. Heller's letter, that all the issues outstanding were satisfied then, that the matter has been before this committee this many times, etc., and that now the ministry has agreed to bow to the suggestions of the committee and to go back and allow the complainant another adjudication in this matter, despite what the ministry feels has already been done. It would be almost going from being flexible to breaking to ask the ministry not only to agree to all those things but also to pay for the entire process.

Mr. Bell: The complainant might say, on the other hand: "I have to assume further legal costs to address this issue. I should not have to do that because, as far as I am concerned, there has never been any doubt that

interest was available. The Ombudsman agreed with me and the standing committee has agreed with me. Why should I have to do that?"

You see, here is the potential. I do not want to do anything that will in any way affect the determination of the merits of this issue, but there is a potential here that if the merits of interest are considered and not awarded to the individual, he not only has had to incur the costs of his own legal counsel--and we now have a full hearing; do not forget that it is his suggestion for a hearing--but also will have to assume half the costs of the adjudicator.

Mr. Crocker: Is that not, though, Mr. Long, the kind of--I am sorry, Mr. Bell.

Mr. Bell: I have been called many things; it is all right.

Mr. Crocker: Both of those, Bell and Long, are meant as compliments.

Is it not, though, the kind of risk that the applicant in this case is undergoing by challenging the process the way he wants to do it?

Mr. Bell: How about this compromise: The complainant assumes his own legal costs, and we leave the question of who is to assume the adjudicator's costs to the adjudicator, in that we would hope he or she would exercise the usual judicial discretion of costs following the event.

Mr. Crocker: I would not have any problems with that.

Mr. Zacks: I would.

Mr. Bell: Why?

Mr. Zacks: Because I do not think it is fair. There was never any adjudication on the merits of the case at the full adjudication, Mr. Heller's adjudication. If Heller had gone into the merits of the interest question, this whole thing would have been resolved back then.

Mr. Bell: Yes, but your man did not get costs at the first instance. Here he has an opportunity to have costs assumed. Let me restate that. How about we leave the question of costs, both legal and adjudicator's, to the discretion of the adjudicator and otherwise giving the complainant an opportunity to have his legal costs picked up, should he be successful and should he convince the adjudicator for interest and the cost of that. You have to be careful, Mr. Zacks. I know where you are going.

Mr. Zacks: I know I have to be careful. The approach I would ask you to consider is that this complainant has been through a very lengthy process with the ministry. There have been two adjudications, and he has yet to have the merits of this case decided. In fairness to him, his exposure to costs should be minimized. He is prepared to take on his own legal costs in this. I believe that to put him in the position where he may have to bear the costs of the ministry's legal expenses plus the adjudicator's costs is too onerous.

Mr. Bell: Why? Why should he be treated any differently from anybody else who comes and asks for relief in respect of any claim, be it before an adjudicator, an arbitrator or the court?

Mr. Zacks: Because this is an Ombudsman's process, and we are looking at the ultimate fairness to the complainant.

Mr. Bell: The adjudication is not an Ombudsman process.

Mr. Zacks: It is all part of the whole investigation and review of the case.

Dr. Hill: Every now and then my counsel and I disagree. That can happen occasionally.

Mr. Bell: That happens with my clients too, Dr. Hill.

Dr. Hill: Very rarely, with all due respect.

Mr. Zacks: They do not do it in public, though.

Dr. Hill: I know, but it has to be resolved.

Mr. Bell: Mine usually do.

Mr. Zacks: You are not as fortunate then.

Dr. Hill: It has to be resolved, and I think, with all respect to my counsel, in this particular instance I am prepared to accept the option.

Mr. Bell: Thank you, sir, but there are perhaps two options open for discussion. One is that he assumes his own legal costs and the costs of the adjudicator be left to the adjudicator to determine, or, second, that the question of everyone's costs be left to the adjudicator to determine. Mr. Zacks is right that one is potentially more onerous on one of the parties than the other. Do you want to take it under advisement for a few minutes as to which one you think is--

Dr. Hill: Let us discuss it. Just give us about five minutes.

Mr. Bell: All right. Why do we not get on to the next one and then we will take a five-minute stand-down if you want.

Mr. Crocker, what is behind 14 in terms of an attempt to limit the interest factor to be applied to the \$27,000?

Mr. Crocker: I am not sure, Mr. Bell.

Mr. Bell: That makes two of us.

Mr. Crocker: I would be just as happy with the traditional way of calculating interest after any judgement.

Mr. Bell: Okay. Then I think you and Mr. Zacks are on the same wavelength.

Mr. Zacks: I agree with that.

Mr. Bell: Can we leave it to you two gentlemen, or others with you, to hammer out the wording?

Mr. Zacks: Yes. I am content with that.

Mr. Bell: Do you want to take that five minutes now before we close this off?

Dr. Hill: Yes. It will just take five minutes.

Mr. McLean: Before you do, I want to speak briefly on it. The claimant has been through 10 years or so of trying to get this thing settled. He is willing to pay for his own legal counsel. That is one avenue. But you are looking at sharing costs. He has control of the legal people he hires, and he could set a fee that he would be willing to negotiate with those people. Why should you put him in the position where he may have to pick up part of the ministry's legal fee, as well as part of the adjudicator's fee, when he probably is not going to end up with anything out of it, just the satisfaction that it is being done correctly? Here we are trying to put him in a position to pay part of the adjudicator's fees.

What is the matter with the procedure as it was originally, where the adjudicator was appointed, paid for by the ministry, the ministry paid its legal fees and the claimant paid his legal fees? To me, that appears to be the only fair way of doing it. You are putting somebody in a position where he does not know what the end cost is going to be. His costs and the adjudicator's costs could be as much as what he will get in interest. You are not being fair to the claimant when you do not allow the adjudicator to be paid for by the ministry because in the first place they never were satisfied with the settlement.

11:00

Mr. Bell: Mr. McLean has put his finger right on the heart of the outstanding matter. The committee can debate that for resolution now or decide to reserve it for consideration at another time, after Dr. Hill has made further comments.

Mr. Philip: It might be useful for Dr. Hill to know the feelings of some of the members of the committee on that. He is meeting with Mr. Zacks.

I think Mr. McLean makes a fairly good point. The legal costs of the Ministry of the Environment would be borne only if you lost. In the light of what we have heard, I guess our assumption is that it is not likely to happen. None the less, it is a point that it has been dragging on for a long time. The committee was empathetic towards the case and the Ombudsman was empathetic towards the case. Perhaps the point Mr. Zacks made should be considered by Dr. Hill when he and Mr. Zacks meet.

Mr. Sheppard: I support Mr. McLean's comments.

Mr. Crocker: I might add, Mr. Philip, that I would not have been so ready to agree to Mr. Bell's suggestion had I not some faith that the second adjudication would turn out favourably to the ministry. That is why it makes some sense. There is an element of fairness to having all the costs follow the event, especially in the light of the fact that this was a second adjudication. As evidenced by the September 10 letter of the adjudicator, at least the ministry felt things were finally determined after the first adjudication, the first application. There is a significant element of fairness in having all the costs follow the event; solicitors' costs limited, but--

Mr. Bell: Mr. Zacks, you and I have something in common this morning.

Mr. Zacks: We do? Yes, we do, do we not? Will we take five minutes and--

Mr. Bell: Perhaps you can take five minutes and then let us know your position. Some members have expressed a view. It may be confirmed today or it may be confirmed when we get reports.

Mr. Chairman: We have a letter from the Deputy Minister of Consumer and Commercial Relations, Ms. Gibbons.

Mr. Bell: Debbie has distributed to you two letters received this morning at about 10:30 from the Minister of Consumer and Commercial Relations (Mr. Kwinter), or specifically one letter from the minister and one from the deputy minister. This concerns the third item on your agenda this morning; it is A-1 in your material.

Without reviewing the detail of these letters, they say essentially that the recommendation in your report will not be implemented by the ministry. That report has not yet been debated by the House; so it is not a situation where there has been an adoption of that recommendation formally by the House.

As you can see, the deputy wished to know whether it was necessary for anybody to attend this morning and speak to the matter. I have already advised the chairman, and he has instructed Debbie to communicate that it would be necessary for someone to attend.

This is the second time in the history of Ombudsman committees that it has happened that the ministry has declined to implement, although we have the issue of the report not yet being debated. I think it is important that a ministry representative attend and answer any questions you may have to help you understand the reasons for the position. Then you can decide how to deal with this in your next report to the House. Of course, Dr. Hill will want to review the letter and make any comment he believes to be appropriate to the committee.

To bring you up to date, you can insert that material in A-1, to be addressed when we reach it.

Mr. Philip: I am delighted to have signed it. That is a great last paragraph.

Mrs. Meslin: Are we assuming we will have to argue the whole thing all over again?

Mr. Bell: No. I think we just assume we are going to talk about it this morning with a representative of the ministry.

Mr. Shymko: He is not going to tell you anything new.

Mr. Bell: It is not a question of redoing it. We will talk about that shortly.

Dr. Hill, can you assist us any further on the Ministry of the Environment matter?

Dr. Hill: Yes. After listening to and getting the flavour of the discussion of the standing committee, after an impassioned discussion in the hallway with my counsel and my staff and after considering the fact that there has been a long history and a fair amount of suffering by the complainant, I accept the position that the complainant should pay his own legal fees. We respectfully suggest the ministry pay for everything else.

Mr. Chairman: Is that satisfactory to the committee?

Mr. Bell: Mr. Crocker, unless you have anything further you think may assist the committee, for the purpose of the record and for communication and discussion with your colleagues, I think you can assume the following:

That it is the committee's wish that the hearing be a hearing in the ordinary course, with the opportunity available to the party to call and lead any evidence he and his counsel consider appropriate in the circumstances;

That there be a clarification of the principal amount on which interest may be calculated; that is, the \$27,730;

That the rate of interest be expressed by a clause in the submission as one within the discretion of an adjudicator in the ordinary course, as per the Arbitrations Act or the Courts of Justice Act, in language that can be worked out between the parties;

That on the question of costs, the parties will each assume their own legal costs and that, as per the original hearing, the costs of the adjudicator are to be solely borne by the ministry.

You may take that as the committee's decision, which will be expressed in its next report in the form of a recommendation. In view of the passage of time, I know I speak on behalf of the committee in urging you to discuss this with your colleagues and to respond to the committee and to Dr. Hill as quickly as possible with regard to the position. We hope the matter can proceed quickly to its final stage.

Mr. Crocker: As I said at the outset, Mr. Jackson is out of the country for a while and I do not want to rewrite his agreement without his at least having looked at it. Therefore, I would like to let you know that I will wait for him to return.

Mr. Bell: When does he return?

Mr. Crocker: I think the day after Thanksgiving, October 14.

Mr. Bell: I think Dr. Hill and his office, for themselves and on behalf of the committee, will be looking for a response that week, the week of October 14 or whatever it is.

Mr. Crocker: Fine.

11:10

Mr. Bell: Members, if that is all on this matter, I would like to deal with the next item on your agenda, specifically involving in tab A-4 the recommendation outstanding as for the Ontario Northland Transportation Commission. Thank you, Mr. Crocker, for your assistance.

Mr. Crocker: Thank you. I have done so well here today, I may not see you again. They may not send me back here.

Mr. Bell: You have done very well.

Members, as the agenda indicates, there is a representative, Steve Stepinac, who is counsel for the Ministry of Northern Development and Mines.

Thank you for attending. I know it is on relatively short notice. We know you are here carrying a brief for the Ontario Northland Transportation Commission because its legal counsel is taken up with an imminent commission meeting tomorrow.

Members of the committee, you will recall that the second recommendation in your 14th report--this is your so-called special report, issued earlier this year--dealt with the question of whether a particular individual, this complainant, was entitled to top up, if you will, his pension benefits for the first two years of his service. The issue revolved around whether, within the language of the board's policies, etc., he could be considered a permanent employee for the first two years.

You will recall that we had some fun with the definitions varying and otherwise, and at page 9 of the 14th report you recommended to the House that:

"The pension board of the ONTC allow Mr. R to make contributions for the period from six months after his initial date of employment in May of 1957. The committee intends that the period of this contribution will be for 18 months ending April 1959."

You said quite simply, "Let him top up to a maximum of 18 months, representing 18 months of the first two years, and if you need to amend your policies or something else to implement it, do so."

In the material, members, you again have a letter from me to Mr. Spooner notifying him of what the committee intends to do. On the fourth page of this material is a memo in June of this year from Todd Decker to you and to me, which encloses the last document in this material.

Mr. Philip: Where are you?

Mr. Bell: It is tab A-4. The last page really sums it up. I hope I am not being facetious when I say that I may keep this letter as a collector's item. This is a letter from the then Minister of Northern Development and Mines to Mr. Ramsay, MPP for Timiskaming, indicating he has been advised that the commission will be following the recommendation of the standing committee and that an order in council amending the pension regulation will be made shortly to accommodate Mr. R.

I understand that an order in council has not--perhaps, Mr. Stepinac, you can tell us what the status of the matter is.

Mr. Stepinac: Yes, I will be glad to do so, Mr. Bell. What happened was that the matter was considered by the Ontario Northland Transportation Commission formally at a meeting on August 27, and at that time the commission resolved to amend the pension bylaw to implement this committee's report, as set out. That was communicated to me on September 10 and I then drafted a recommendation for an order in council, which is proceeding. I believe it completely implements the recommendation of this committee.

I did some checking this morning to see what the progress of that is. As you know, the acting Minister of Northern Development and Mines was out of town last week in connection with some free trade discussions and that may account for the recommendation not yet having been signed, but I have no reason to believe it will not be signed very shortly and proceed to cabinet.

Mr. Bell: You are talking about the Premier (Mr. Peterson), are you not?

Mr. Stepinac: Yes, I am. In any event, the recommendation for the order in council was drafted by me early last week and went to his office. As of this morning, I was unable to confirm that it has been signed but, as far as I am concerned, it is moving along.

Mr. Bell: Is there any cause for concern that the order will not be signed?

Mr. Stepinac: I cannot imagine why. The commission recommended that the pension bylaw be amended. The ministry staff has all signed off and it is in the Premier's office for signature.

Mr. Bell: Subject to what Dr. Hill has to say on the matter, would you undertake, in concert with your colleague at the commission, the commission legal counsel, to monitor that and as soon as the order in council has been signed and issued, provide both Dr. Hill and the committee with a copy of same so that, unless there is anything else outstanding, we can close our books?

Mr. Stepinac: I will be glad to undertake to do that.

Mr. Bell: Dr. Hill, is there anything else on this?

Dr. Hill: I am pleased with the outcome of this matter and I have nothing more to say, Mr. Chairman.

Mr. Bell: Unless committee members have anything to add, Mr. Stepinac, I thank you for coming to assist in this direct way.

Mr. Stepinac: You are very welcome.

Mr. Philip: May I ask a question? I think it is important. When a committee passes a resolution like this, I find it somewhat difficult that we must then rush it through the Legislature because some ministry decides it is going to hold out on the committee until it has passed the House.

The committee is a body of the House and one would have expected that would not be necessary. I am concerned that has happened. It seems to me that you people were holding out on us on a technicality.

Mr. Stepinac: From my own perspective, that is not the case. If you are referring to the actions of the Ontario Northland Transportation Commission over the summer and the apparent delay, I cannot give you all the reasons. I do know, from personal knowledge, that several new commissioners were appointed over the summer and obviously they would not have had a full background with the particular case.

This is the first time I have heard the suggestion that the commission or the ministry was delaying on some sort of a technical basis.

Mr. Shynko: We can presume many things as to why this is implemented now, but was there an intervention from the minister to the commission subsequent to our recommendation that may have speeded up the process of the decision taken to have an order in council?

Mr. Stepinac: I do not know of any personal intervention by the minister to the commission. There was a letter written that Mr. Bell referred to and there may indeed have been--there probably was--some communication

between staff of the ministry and staff of the commission. As I say, I do not know of any personal intervention by the minister, either way.

Mr. Shymko: Is there anything on paper from the commission that states it will be following the recommendation of the standing committee?

Mr. Stepinac: Yes, sir. That is the resolution the commission passed on August 27, 1986.

Mr. Chairman: Thank you, Mr. Stepinac.

Mr. Bell: Members, the last item on this morning's agenda is found in subtab A-1 of your material, re the Ministry of Consumer and Commercial Relations. In view of the communication you received from the deputy minister and the minister this morning, it has been necessary for you to request the deputy minister, Ms. Valerie Gibbons, to attend. Ms. Gibbons, thank you for attending on relatively short notice on your specific involvement. The committee members have the two letters that were sent from you and the minister. If you will permit me, I will give a brief background description for the committee.

11:20

Members, in your 13th report you consider this matter starting at page 13. This is the so-called Housing and Urban Development Association of Canada issue and the one involving the Honourable Frank Drea when he was Minister of Consumer and Commercial Relations. It involves certain representations that he made publicly in a number of contexts, two of which were both in the House and before a committee of the Legislature, indicating that certain results had been obtained for these complainants.

The Ombudsman in his report recommended essentially that the result that people believed to be in place as represented by the ministry be effected. You agreed in principle with the Ombudsman's recommendation but you had some specific amendments to make in terms of the thrust of matters and, at page 16 of your 13th report, you issued a recommendation in four parts. I think it is worth while that I read these into the record right now.

"1(a) That the ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses which are owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the ministry. (It shall be the Homeowners Association's responsibility to advise the ministry of the names of these persons).

"(b) Following this review, the ministry, at no cost to the home owners, pay or cause payment to be made for the repair of those homes which have suffered damage as a result of a major structural defect relating to original construction or in which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports.

"(c) If any of the above noted home owners have repaired damage caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC reports, then these home owners should be compensated for their actual repair costs.

"In the committee's opinion, the ministry should seek contribution

and-or indemnity from HUDAC for the cost of these repairs. The committee has concluded that HUDAC's actions have in some measure caused or contributed to the ministry's predicament and to the statements made by the minister wherein he made commitments to the home owners."

To complete the background, at page 15 of the report you noted as follows: "The committee, in principle, agrees with the conclusions and recommendations of the Ombudsman in this case. Regardless of the ministry's position, the simple fact remains that the minister made public commitments to the home owner that deficiencies would be repaired."

You then cite an example--probably the most specific example--of comments made by the Honourable Frank Drea in October 1979 before the standing committee on the administration of justice.

In tab A-1 of the material before you, you will see again a letter of July 21 from me to the minister, attaching certain material in the Ombudsman's report. I received one communication, of August 27, from the minister directing me to Mr. Lewis. Mr. Lewis and I never have connected on this. I know he was very busy, and he knows I was busy on other matters. I wish I had been on vacation. In August, I was doing other things not relevant to this committee.

I received a message in my office--and I do not know whether it was from Mr. Lewis--that the matter was being considered by the minister at the political level and that was probably where it would remain pending a more formal response. Ms. Gibbons, I am not sure whether the committee members have had full opportunity to review the minister's letter of yesterday to the chairman. Can you touch upon its salient points?

Ms. Gibbons: Does everybody have a copy of the letter?

Mr. Bell: Yes, they do.

Ms. Gibbons: The nub of the letter suggests that as part of our ongoing function and our ongoing interaction between consumer and industry, we are often in the position of honest brokering on behalf of the consumer, that the honest broker position, by definition, sometimes results in success and sometimes does not, and that if we were to begin to assume financial responsibility for all those negotiated settlements that we do not negotiate successfully, we would be in a very difficult position as a ministry. That is the nub of it. In addition to that, the letter goes on to point out that there is no regulatory failure on the part of this ministry.

Mr. Philip: Do you not agree that there is a difference between being an honest broker and publicly making a statement as a minister?

Ms. Gibbons: The statement of the minister preceded my time in the organization, but I understand from the staff that at the time he made the commitment he had every reason to believe he would be capable of negotiating a successful solution and that the dynamics in the situation caused it to fall apart. I do not want to suggest that any one party owns that responsibility, but rather that sometimes tensions do arise which cause solutions that appear at your grasp to kind of fritter away. That is the situation in this case as I understand.

Mr. Philip: I wonder whether I can direct your attention to the last paragraph of the minister's letter, "In arriving at this conclusion, we

recognize your desire to be of assistance to the home owners and to emphasize the need for caution in ministerial statements."

I do not think the position of the committee was that the minister should have exercised caution but rather that ministerial statements should be taken as statements of policy. Whether or not he exercised the right judgement in making that statement, whether or not it was a premature statement, it was in fact a statement. Do you not agree that a statement by the minister is a statement of policy on behalf of your ministry? That statement promised the home owners to be reimbursed. How can you go now and try to argue that a clear statement of policy by your minister will not be upheld? If you cannot believe and hold accountable the minister, how can you hold accountable anybody else in the ministry?

Ms. Gibbons: I do not think I am suggesting that we are backing away from a policy position. What I am suggesting is that the minister of the day felt he had an agreement, some pieces of the agreement were beyond his control, the dynamics of the situation broke down and he was unable to effect a solution.

11:30

Mr. Philip: Would you not agree that his statement was fairly unequivocal?

Ms. Gibbons: Yes.

Mr. Philip: Then how can he not be held responsible for an unequivocal statement?

Ms. Gibbons: As I understand the situation, he did not have the authority to hold pieces of the action together. He could not compel the developer to pay. Legislatively, he had no authority, other than his capacity to persuade and negotiate on behalf of the parties to the agreement.

Mr. Philip: That was not included in his statement. The buck stops with the minister. If the minister goofs up on you, you are going to have to pay for his sins. I do not know how you get away from that in a democratic parliamentary system. To have hindsight and say that the minister goofed, or was premature--

Ms. Gibbons: I did not say he goofed.

Mr. Philip: You are using diplomatic language, perhaps because you have more grace than Frank had when he was minister. The fact is the minister went out on a limb and made a statement. The statement was unequivocal. When a minister does that, how can you not help but live with that in a democratic system? The buck stops with the minister.

Ms. Gibbons: As I said, there were two pieces of the action. He believed that he had negotiated a solution. All parties agreeing to a solution do not put the minister in a precedent situation. All parties not agreeing to a solution puts us in a position where, every time we lose a negotiated settlement, we need to pay for the failure and we are not able to do that.

Mr. Philip: Would you repeat your last sentence? That does not necessary follow.

Ms. Gibbons: As a ministry, we find ourselves in a position daily of trying to negotiate between parties over whom we do not have any legal authority. If we were held accountable for the financial loss every time we were unsuccessful in negotiating a settlement, we would be in a very difficult situation.

Mr. Philip: Would you not agree that it is a very rare occasion--in fact, this is the only one--where the minister has made a definitive statement, telling people that they were going to be reimbursed, and that it is not a daily occurrence, as you suggest, and it is not setting a precedent? The only precedent that this will set will be that if a minister is going publicly to make a promise in terms of what an allegedly grieved party is going to get, he will have to keep that or he will be faced with an action by the Ombudsman. That is all this committee is saying.

Ms. Gibbons: I cannot speak for how often ministers have made commitments in the past that have not been honoured. I can only restate that he made the statement with the best of intentions, thinking he had negotiated a solution. In fact, that was not the case.

Mr. Shymko: I am disturbed by some of the references the deputy minister has made, receiving requests to get involved in some of these contentious areas of dispute, almost on a daily basis. Do you, as a ministry, even today, in your words, "attempt to persuade and negotiate" in some of these cases?

Ms. Gibbons: We often find ourselves in the position of assisting with either understanding what the issue is that the consumer is facing, identifying who they may contact to resolve their problem or, if they appear unable to make that type of interaction themselves, to assist where possible.

Mr. Shymko: I will have to check Hansard again. My understanding is there is no hesitation on the part of the ministry today, as it was in the past, to "attempt to persuade and negotiate," or, as you indicated, the minister attempted to mediate a dispute. This thing is going on. You do not refuse to do this.

Ms. Gibbons: Generally, we do not refuse to provide assistance if we think we can. We like to try to carve our niche in those areas where we have legislative responsibility. We are often the receptacle of every complaint the community encounters in the consumer sense and often we are not able to do that. Sometimes we need to involve other ministries, other jurisdictions and levels of government.

Mr. Shymko: If I understand from your words, you just said you do attempt to persuade, to negotiate, to mediate, to get involved--

Ms. Gibbons: To assist and to provide information.

Mr. Shymko: How can you possibly say on the first page of this letter of September 22 that you have no direct authority to intervene?

Ms. Gibbons: That is right.

Mr. Shymko: Yet you do it. Assisting and persuading is intervening, is it not?

Ms. Gibbons: It is a subtle point. The paragraph is intended to suggest that legislatively there is no authority to do that, but we often find--

Mr. Shymko: Yet you do this.

Ms. Gibbons: we provide services where we can.

Mr. Shymko: Can you blame the past minister for following the same route of persuasion, negotiation and mediation?

Ms. Gibbons: I hope I have not blamed him at all. I tried to say he tried to effect a solution.

Mr. Shymko: Yes, but you say he had no direct authority to intervene. You say your ministry has no direct authority to intervene, but that perhaps in a subliminal, subtle way you intervene all the time on a daily basis. I am very confused by your making a categorical, strong statement to this committee that you have no authority to intervene and yet you do it, and saying that because you have no authority, you therefore cannot resolve this issue and the minister was completely out of line.

We have had the impression in the past that there was some kind of disinformation, misinformation or lack of communication between the Housing and Urban Development Association of Canada and the minister. Do you agree with that?

Ms. Gibbons: That precedes my time, Mr. Shymko.

Mr. Shymko: As a committee, we concluded in our recommendations--I will repeat the words of Mr. Bell earlier, "We believe that HUDAC's actions in some measure caused or contributed to the ministry's predicament," meaning statements of commitments to home owners. In other words, somehow there is a relationship between the agency and the ministry that has led to commitments being made by the government and by the minister in particular. Was there a problem?

Ms. Gibbons: I do not know whether there was a problem. Let me say again I do not think it is unusual that a minister would sometimes attempt to find a solution in areas where he might not have direct legislative authority. It is part and parcel of what each of you does every day on behalf of your constituents. I do not know that it is so unusual. In this case, I am suggesting that he tried to work three parties to a problem into a solution and that he felt he had achieved a solution. In fact, the solution did not materialize.

Mr. Philip: May I have a supplementary? I do not tell my constituents that they are going to get something until I have something in writing that says I have won the battle for them. That is where the focus has to be. I am not throwing stones at Frank Drea.

You have a HUDAC home warranty program that has never worked very well. It has been an abominable mess since it started. You have a minister who is probably well meaning, who says, "These people are being ripped off." Knowing Frank, he probably shot a little too soon and made some promises based on what he saw to be the justice of the case. Now we have to say: "We are sorry, Frank, that you shot too early. You probably did it out of a sense of concern and a sense that an injustice was going on, but you have to be responsible for your decision."

The decision was fairly clear. It was, "These people have been ripped off and we are going to see they are reimbursed." I do not know how much clearer you can be than that. That is casting the best light on Frank. It is no great surprise to the HUDAC home warranty people that I am less than complimentary to them, but then I have never been too complimentary to them.

Mr. Shymko: If I may proceed and conclude my questions, as Mr. Philip has indicated, normally when we as elected members of the Legislature intervene or try to persuade or negotiate things, we do not do it unless we sense we have some authority to do it. We would not interfere in a court situation because we have no authority to do it, but in other areas we do. There is a grey line somewhere in your constant, daily involvement and your interventions and persuasions, and then all of a sudden there is a very restrictive statement saying, "We have no authority to intervene."

11:40

Ms. Gibbons: Legal authority.

Mr. Shymko: You have no legal authority?

Ms. Gibbons: As I said, it is not unusual to try to effect a solution on behalf of consumers in those areas where we do not have a mandated legal authority to do things. Consumers complain every day about the kinds of services they receive from their local stores or wherever, and we do what we can to provide information that would give them the answers they are asking for or to provide names of people they can contact for assistance. We might sometimes even call the service itself and suggest that there may be ways it can deal with this. That is part of the ministry's role with respect to consumers.

Mr. Shymko: Is it not true that in your involvement you mislead the consumers and individuals involved in the mediation to some degree into having expectations, false expectations in this case, because you have no authority to resolve the issue?

Ms. Gibbons: Very often we are able to solve problems.

Mr. Shymko: Sometimes, I am sure you do. Is not the crux of this entire issue payment and money? For example, can you explain to this committee what you mean that if payment were made--and that is the real test of solutions and resolutions in many respects. However, payment of any nature to the home owners would create a precedent of major consequences. Is this not the real reason you are afraid to resolve this, the setting of precedent, notwithstanding this whole thing about authority?

Ms. Gibbons: That is what I said in the beginning. If we were to assume responsibility in this instance for failure to negotiate a solution to a problem that had financial loss, we could be called upon in every subsequent situation to pay for the financial loss. That is a precedent that as a public servant I would not want to support.

Mr. Shymko: Is this the issue? You said you feel this is the issue.

Ms. Gibbons: I think the letter says this is the issue.

Mr. Philip: If that is the issue, why can you not name one example other than the Frank Drea incident where this has happened before? One would think that if this were going to set a precedent, there would be a series of examples where this would have been a problem.

Ms. Gibbons: Maybe the fact it has never happened is the answer to the question.

Mr. Philip: Maybe the fact it has never happened means it does not happen very often and, therefore, this will not be a precedent.

Mr. Sheppard: On the stray page we got from the deputy minister, it says the home owner's problems were not created by and are not the responsibility of the ministry. It goes on to say the primary responsibility for building inspections belongs to the municipality and that there is no regulatory failure on the part of the government as the homes in question predate both the Ontario Building Code and the Ontario new home warranty plan.

This is legislation. This is the responsibility of the people in the Ministry of Consumer and Commercial Relations. I feel and believe they have not been carrying out their responsibility.

I can give you two or three examples in my riding. Sure, they called in the building inspector or the municipality. He looks at it; he passes it and then it leaks or it is not straight. Where are they supposed to go? They go to the ministry. It was set up by the ministry, and the ministry, as far as I am concerned, is not carrying out its responsibility.

Mr. Philip: I wish it were the responsibility of the ministry. It is not.

Mr. Sheppard: Well, it is HUDAC.

Mr. Philip: That is the way it has been set up. It is a stupid system that has been set up.

Mr. Sheppard: I have no use for HUDAC at all. It just does not carry out its responsibility; yet it is supposed to come under the Ministry of Consumer and Commercial Relations.

Ms. Gibbons: It did not exist at the time.

Mr. McLean: I have a question on that. Does the ministry not have jurisdiction over HUDAC?

Mr. Sheppard: Yes.

Ms. Gibbons: Yes.

Mr. McLean: When the home owners have a complaint and come to HUDAC with it, is the ministry not then supposed to act to make sure HUDAC looks after that?

Ms. Gibbons: The home warranty program provides solutions to home owners. That is the service they provide.

Mr. Sheppard: And it costs \$250 down per year when you build a house.

Ms. Gibbons: Under very specific sets of circumstances.

Mr. Philip: Mr. McLean's question leads more to the point that if you are not satisfied with HUDAC, you have no appeal to the ministry. If HUDAC turns you down, do you have a final appeal to the minister?

Ms. Gibbons: No. But there is an appeal process through the Commercial Registration Appeal Tribunal.

Mr. Bell: Let us see if we can further focus this. To complete the background, members, first of all, you have already dealt with the issue of support for the Ombudsman's recommendation a year ago and it is embodied in your recommendations. I know you do not intend to rehash the merits, but you do intend to discuss the merits of the minister's response.

This report, being the 13th report, in recommendation 7 that is in the record now, has not yet been debated by the House, so one of the things you will have to address in your next report is how the Legislature and House leaders should deal with that report, on an expedited basis, we hope.

Having said that, Ms. Gibbons, is it more the concern of the minister and your concern to avoid a precedent, if you will, by the implementation of this recommendation for general purposes rather than to respond to the merits of this particular case? I do not think we want to rehash what Frank Drea said or did after he had the meeting in the HUDAC boardroom where he left it fully believing that they would effect a resolution. That is water under the bridge.

Can you help in that regard? Is the concern focused on (a) avoiding a precedent for a minister in the future by similar actions or (b) the merits of this one?

Ms. Gibbons: I would say it is both and I would ask the executive director in charge of the program to speak to this.

Ms. Rush: My name is Jan Rush. I am executive director of the business practices division at the ministry.

I believe the merits of the case are familiar to the committee and I think it is a subsequent analysis that the original or the first order is the precedent-setting circumstance. In reviewing the case itself, however, there are serious questions about the merits of the case and whether, under different sets of circumstances, there would have been any ability to compensate the home owners. Certainly, under the existing Ontario home warranty program, we do not believe there would have been that ability.

Mr. Bell: Okay, but let us remove the precedent issue for a moment. There have been many cases involving your ministry, this committee and the Ombudsman where the ministry has disagreed with the merits--or at least with the committee's and the Ombudsman's assessment of the merits--but nevertheless implemented a recommendation. One involves HUDAC about four years ago, as I recall. You are not saying "Because we disagree with our assessment of the merits with others, we are just not going to implement it."

Ms. Rush: But the circumstances in the early 1970s, the standards of housing and the mechanisms that were available for any remedies at that time were such that, in this kind of case, at that point we would not have been able to provide any direct assistance.

It gets back to the point of mediation and trying to assist those parties that could effect some solution.

Ms. Gibbons: Conceivably, the individuals with construction faults in their homes had access to the legal process for resolution of their situation. In the absence of a vehicle created by government to assist, they had access to the courts.

Mr. Bell: Okay. I understand that. Let us get to the precedent then. If the precedence concern was removed, would that put a different light on the ministry's position on implementing the recommendation?

11:50

Ms. Gibbons: I would not think so. It is my sense that in this situation--and my officials who have been involved with it longer than I have may correct me--the legitimate avenue for resolution of the problem for the individual consumer or home owner was the court. That process was tried in at least one situation and a minor award was granted. Other home owners had the same opportunity and that should have been the approach they took.

Mr. Bell: I know, but that is available to anybody who may go to the Ombudsman. One can elect. I do not know whether it has involved your ministry, but an election should not prejudice one from an ability to obtain a result through the Ombudsman process.

Having said that, I will not speak on behalf of the committee, but my strong sense is that, given the invitation, the committee would be able, in its next report, to express its position that the recommendation, as it relates to the actions of a previous minister, is not in any way to be taken as a precedent. If one undertakes an attempt to arrange a satisfactory settlement between two parties, one does not automatically or of necessity assume a financial responsibility for something that goes off the rails. That is not the issue involving Mr. Drea's involvement in this. I will not speak for Dr. Hill, but it would be my sense that Dr. Hill would readily agree that, as far as his office is concerned in the future, that is not to be taken in any way to be a precedent. That is what I was getting at.

If we relieve that as a concern of the minister's--

Ms. Gibbons: My sense is you would be wandering into the area of policy and that, in fact--

Mr. Chairman: We are there now.

Ms. Gibbons: --the responsibility of government is to enact policy in those areas where it feels legislation is required. In this case, the regulatory function was not in place at the time and I understand that even if it were in place as is currently circumscribed, it would not have helped these home owners. I guess the answer to your question is no.

Mr. Bell: I tried. I have no further questions of the deputy minister.

Mr. Hennessy: Looking at the whole thing, if you pay the Bay, Simpsons or Sears money for a warranty on an appliance, it takes care of the appliance. That is what you are paying for, to have that bit of equipment serviced, whether it be a vacuum cleaner or something such as that. If you pay HUDAC \$250, you expect some kind of guarantee.

Mr. Philip: This was not in force, though, at that time.

Mr. Hennessy: To go back, I am saying the responsibility of each is involved to some extent.

After all, if you go to the Ministry of Consumer and Commercial Relations--and I have gone there many times and I am a little disappointed in the reaction. If they run up against a little bit of difficulty, they cannot handle it. They call back and say, "Sorry, we cannot handle it." They do not give the average person who is looking for help any indication that they want to help. They just look at it and say, "Sorry, we cannot handle it." They do not even make an effort.

I have had quite a few people who have come to me with different complaints. Being a member, you send them to the Ministry of Consumer and Commercial Relations to handle it, but it does not handle it. It may wind up coming back to the Office of the Ombudsman.

Ms. Gibbons: I think it is important to acknowledge that by the time a complaint gets to the ministry, it is often a very difficult complaint. My figures may not be quite right, but I understand we somehow manage to settle to the consumer's satisfaction 70 per cent of the complaints we receive. That leaves another 30 per cent in which we are unable to intervene, because we do not have the legislative authority, it is some other jurisdiction of responsibility or whatever. In effect, our record is very good.

Dr. Hill: With all due respect, I am out of it at this point, but I have an observation. It seems to me that these issues have already been argued at length by this committee and the bottom line is that the ministry is refusing to comply with the Ombudsman's and the committee's recommendation. They have said, "No, we are not going to comply with it." At that point, it is right in your lap.

Mr. Hayes: There is one thing we seem to have overlooked. We are really emphasizing the statement made by the minister at that time, in 1979. The important thing is that the minister was the voice of the ministry. It is the ministry, not that individual, we have to look at. He was talking on behalf of the ministry, not as an individual, as far as I am concerned, the way I read this. I believe this committee and the home owners were led to believe they were going to be taken care of. It is long overdue that this has not been resolved by now.

Mr. Chairman: Is there any further discussion?

Mr. Bell: I would like to thank Ms. Gibbons again. Members, you are going to have to address this. You are not going to have to rewrite your report or your recommendations, but you are going to have to address the minister's position before the matter is debated in the Legislature.

Members of the committee, could you stay with Dr. Hill for another 10 minutes? Can we go in camera for 10 minutes? There are a couple of matters for future scheduling that I would like to discuss. One of them should be discussed in camera. There is also the matter of an add-on agenda to the agenda for the next two days.

Mr. Chairman: Is the committee willing to go in camera? Agreed.

The committee continued in camera at 11:57 a.m.

STANDING COMMITTEE ON THE OMBUDSMAN
ANNUAL REPORT, OMBUDSMAN, 1985-86
TUESDAY, SEPTEMBER 23, 1986
Afternoon Sitting



STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

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Reycraft, D. R. (Middlesex L) for Mr. Bossy

Smith, D. W. (Lambton L) for Mr. Mancini

Clerk: Decker, T.

Clerk pro tem: Deller, D.

Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman of Ontario

Meslin, E., Executive Director

Morrison, G., Director of Investigations

Zacks, M., General Counsel

From the Ministry of the Attorney General:

McComiskey, A. J., Public Trustee

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Tuesday, September 23, 1986

The committee met at 2:08 p.m. in room 230.

ANNUAL REPORT, OMBUDSMAN, 1984-85
(continued)

Mr. Chairman: The committee will come to order.

Mr. Bell: Members, as your agenda indicates, you have one item on the agenda this afternoon involving an issue which apparently has arisen between the Ombudsman and the public trustee. Those of you who were in attendance at Sioux Lookout will recall your discussion when the matter was first raised and your decision to request the attendance of the public trustee today to speak to Dr. Hill's concerns as set forth in his report and as he expanded upon in Sioux Lookout and subsequently in communications between his office and mine.

Before going any further, Mr. McComiskey, could you come forward and take a place before the microphone. For the record sir, could you formally introduce yourself?

Mr. McComiskey: My name is Albert Joseph McComiskey. I am public trustee and have been since 1978. I came from private practice in 1975 to be legal director and then was appointed to the position of public trustee in February, 1978.

Mr. Bell: Thank you, sir. Members of the committee, there are a number of documents you will have to have before Dr. Hill and Mr. McComiskey speak to this matter. Bear with me for a moment.

Would you turn in your briefing material to tab B. As of now, that material merely includes the formal letter the chairman sent to Mr. McComiskey inviting his attendance today, and a second letter from Mrs. Meslin to myself, dated September 10, giving some particulars of the Ombudsman's concern.

The other documentation to which reference will be made as we proceed through this--and of all of the material this is the one which is really not necessary for you to have with you--is page 12 of Dr. Hill's latest report. There is also a copy of the transcript of your proceedings in Sioux Lookout on August 27. I know Debbie has distributed that transcript. It is in the manila envelope which has been handed out. If you would turn to page 72 of that material and forward, that starts the discussion involving Dr. Hill's concerns. As you will see at page 72, the salient portions of page 12 of his annual report are set forth. You can combine those two documents.

The third set of documents is entitled Case Summaries of Complaints Against the Public Trustee Investigated by the Office of the Ombudsman, Submitted to the Standing Committee. It is 15 pages long and is provided by the Ombudsman's office in response to the committee's request for some particulars which may be useful in addressing these matters.

The last document--I do not know whether it has been handed out yet,

Mrs. Meslin--contains certain opening remarks Dr. Hill wishes to make. The combination of those five documents will serve as the focal point of the discussion.

Subject to your wishes, Mr. Chairman, and those of the committee, I think it would be most useful if we asked Dr. Hill to start off. I guess with particular focus on the opening statement but having reference to anything else that is before you, summarize for us, sir, what the problem is.

Dr. Hill: Mr. Chairman, members of the standing committee and Mr. Bell, as you are aware it was with great regret that I commented in my annual report on my concerns about the unco-operative attitude of the public trustee towards my office. As a result of those comments, the committee at its meeting in Sioux Lookout on August 27, 1986, passed a resolution requesting that the public trustee appear before this committee to respond to my concerns. The committee requested that I provide examples of cases in which I felt the public trustee had been unco-operative. I am providing you with brief summaries of 18 instances which I believe represent some of these difficulties. I have already provided the public trustee with copies.

Before answering any questions you may have on any of these individual cases, however, I would like to give you a brief background to the relationship between the Ontario Ombudsman and the public trustee.

First, let me say that the public trustee is a very important government official who plays a very special role in our society. Some of his clientele suffer from mental illness, are developmentally handicapped or are old and infirm. Complainants to our office are often relatives or friends of such disadvantaged persons who have made inquiries of the public trustee and were dissatisfied with his response. The public trustee also administers estates in some situations where persons have died intestate, and beneficiaries of these estates may not be well enough off or well enough educated to administer the estate themselves or hire someone in the private sector to do so. In short, many of the people who complain to me about the public trustee are poor, old, or sick and deserve to be helped expeditiously and sensitively.

A review of the files in our office indicates that the Ombudsman has been investigating complaints against the public trustee since 1977. In 1979, however, difficulties arose. From the correspondence, it appears that Mr. McComiskey felt he should not be subjected to questioning by an Ombudsman investigator once he had provided what he considered was a full explanation in response to our letter initiating the complaint, and he discussed this with my predecessor, Mr. Justice Donald Morand.

As a result of his complaint to Mr. Morand, it appeared that an agreement was reached about the conduct of investigations. However, difficulties continued, and in October 1980, an investigator was completely denied access to a file on the basis that the public trustee was operating under a court order. Other problems were detailed by investigators, including discourtesy towards them, failure to return phone calls and refusal to comply with investigative procedures.

In February 1981, Mr. Morand and Mr. McComiskey met to discuss a resolution to these problems. As a result of that meeting, it appears that an agreement was reached whereby, in view of the duty of secrecy imposed upon the public trustee and his employees, the Ombudsman's investigators would forward to the public trustee the written consent of any complainant prior to requesting access to the file. It was further agreed that the public trustee's

office would cull the file, producing for the investigator information relating only to the complainant. This agreement was documented in a letter to Mr. McComiskey dated February 6, 1981.

In January 1984, when I took office, my staff briefed me on the difficulties we were still encountering with the public trustee. I met with Mr. McComiskey on January 10, 1985, to discuss our access to the public trustee's files. I was not prepared to abide by the agreement which had been entered into by my predecessor. I informed Mr. McComiskey that this was the case and that I expected full access to the files on request.

14:20

In a final effort to resolve our difficulties, I met with the then Deputy Attorney General, Archie Campbell, and with his assistance a process was attempted whereby any problems we had were referred to Brock Grant of his office. Unfortunately, this system only compounded the delays, since matters went to Mr. Grant who then consulted with Mr. McComiskey and responded to us. In addition, on cases in which we did not feel there would be a problem, my investigators went directly to Mr. McComiskey for access and still encountered difficulties. Unfortunately, it is difficult for us to properly conduct our investigations. I felt finally that it was necessary to make public my dissatisfaction with the situation.

As you read through the summaries I have provided, I am sure you will share my concern. I have provided only a few examples, since they illustrate the situation clearly. Although the public trustee may eventually provide us with the documents we require, the delays caused are unacceptable. Furthermore, my staff has been treated discourteously by the public trustee even to the extent that verbal attacks have been made on members of my office. Although we may eventually have obtained the documentation we needed in each file we were investigating, the problems remain.

The public trustee raises issues of confidentiality in defence of his refusal to provide the files. As you are aware, my office has a duty of confidentiality imposed upon it by the Ombudsman Act, a duty that we take very seriously. Other governmental organizations provide us with confidential information upon request, knowing that our duty of confidentiality will be honoured. In any case, we have a statutory duty to investigate complaints and a corresponding right to the information.

I should emphasize also that a proper investigation cannot be carried out if the governmental organization involved is allowed to cull the files and choose what information it will provide to my office. It would not be surprising if I could not find the necessary information to support a complaint if the governmental organization involved chose the evidence upon which I was to make my decision.

My staff and I would be pleased to answer any questions you may have arising either out of my remarks or from the examples I have provided for you. It is my fervent hope that we may resolve the problems between my office and the public trustee so that I may better fulfil my mandate as Ombudsman.

Mr. Bell: Can we just trace the relevance of the material? First, with reference to Mrs. Meslin's letter to me of September 10--members, that is the second letter in your material in the brief--do I understand correctly that letter sets forth the three issues which give rise to the concerns and the comments you have made, first, in your report; second, at Sioux Lookout; third, in your opening statement?

Dr. Hill: Yes.

Mr. Bell: And that Mrs. Meslin's distillation of the three issues is derived from the 15-page case summaries? Perhaps to put it a better way, the case summaries are examples of the three issues and there are no other issues in the case summaries that we need to address.

Mrs. Meslin: No, the case summaries were a distillation of 18 cases in response to the questions in Sioux Lookout. They are not exclusive of the problem.

Mr. Bell: I am really asking whether your letter can serve, at least for the first attempt, as a representative document of that which is in the case summaries.

Mrs. Meslin: Except that the letter talks about jurisdictional issues. The case summaries illustrate problems involved with delay, etc., in terms of our association with the public trustee.

Mr. Bell: Which are other than jurisdictional.

Mrs. Meslin: Right.

Mr. Bell: Okay. I would like to start with your letter first and go through it in some detail so that the committee has a full understanding of at least the salient legal issues that have apparently contributed to this difficulty between your respective offices.

On the first page of that letter, in the third paragraph, you succinctly summarize what you perceive as what has been the public trustee's position in general terms, that not only has he challenged the Ombudsman's jurisdiction to investigate some complaints but also, even in those cases where it was agreed that the complaint was jurisdictional, he has challenged the Ombudsman's right to disclosure of files. Thus, there are really two issues: One is the overall jurisdictional, giving particular circumstances, and second, even assuming jurisdiction, whether the Ombudsman through his statute has the power to compel the production of certain documentation or information in the possession, control or power of the public trustee. Is that correct?

Mrs. Meslin: Yes, that is correct.

Mr. Bell: On the second page, can we look at each of these issues and what your position is? Will you expand on the first?

Mrs. Meslin: I will ask Gail to do that.

Ms. Morrison: What we are setting out here, beginning with number one and going through to number three, are various arguments that have been raised about access or jurisdiction.

The first one is an argument that has been raised in some instances by the public trustee in which he states that, when he is acting as an administrator and executor of an estate of a deceased person, he is acting under court appointment and therefore is answerable to the court and not to the Ombudsman. This comes up not just in this case but in any case where the public trustee feels he is acting under a court appointment.

Our position on that has been that many of the decisions he makes,

notwithstanding the fact that he is acting under a court appointment, are administrative decisions and therefore subject to Ombudsman scrutiny. This is particularly true when we get complaints about delay or matters of his administration of an estate, which we feel make him answerable to the Ombudsman through the Ombudsman Act, notwithstanding the fact that he may have a court appointment.

Mr. Bell: Just help us understand that a little better. Mr. McComiskey, you understand, has taken the position that when he is appointed by the court to exercise some authority under the Public Trustee Act, in respect of any actions undertaken pursuant to that order of the court he is answerable only to the court and that the Ombudsman Act has no application for every action undertaken by him or his office pursuant to that order.

Ms. Morrison: It has been our position--

Mr. Bell: Let us just talk about what you understand his position to be. Is that a fair statement? In other words, where there is an order of the court and his office is doing something, the Ombudsman's office has no jurisdiction?

Ms. Morrison: It is that he is answerable to the court and not the Ombudsman. That is my understanding of it.

14:30

Mr. Bell: Is that the same thing as saying the Ombudsman has no jurisdiction?

Ms. Morrison: If it is the same as saying we have no jurisdiction, this has not been pursued as if it were the same as saying we have no jurisdiction, because a jurisdictional dispute would not be before you.

Mr. Bell: Okay. What do you say to the position, in general terms or for some circumstances, that when the public trustee is acting pursuant to a court order the Ombudsman does not have jurisdiction?

Ms. Morrison: To the extent that a person has another remedy that precludes the Ombudsman's jurisdiction through the Ombudsman Act, that may be true. But our position with most of the complaints we get is that we have a complaint, for example, about the way an estate is being administered, about decisions being taken in the course of the administration of that estate. We take that to be an administrative decision within the meaning of the Ombudsman Act which allows the Ombudsman to investigate any decision or recommendation made, any acts done or omitted in the course of the administration of a governmental organization and affecting any person or body in his or its personal capacity. It is our view that decisions, omissions, etc. may, in the course of the administration of an estate by the public trustee fit within subsection 15(1) of the Ombudsman Act and are therefore within our jurisdiction.

Mr. Bell: Are you saying implicitly there are some things that the public trustee does that are outside your office's jurisdiction?

Ms. Morrison: I do not think that is the question.

Mr. Bell: That is my question.

Ms. Morrison: The question is, when you get a particular complaint, is the subject matter of that complaint within the jurisdiction of our office. We have never had a jurisdictional dispute, that is to say, a decision by the court about jurisdiction. What has happened, and I think the reason we presented you with summaries rather than just the legal questions, is that notwithstanding that we have had no proper jurisdictional dispute, we have had administrative delays and administrative problems with the public trustee which do not relate necessarily to jurisdiction.

Mr. Shymko: Case 1 is classic example. Right?

Mr. Bell: All right. I tried and I am unsuccessful. I guess we have to go into these particular cases to try to get a sense of what the jurisdictional issue is all about. All right. Before we go into those, let us see if we can complete this exercise.

Mr. Philip: I guess I am a little lost. If you eventually get access to the file, is not the public trustee, by the very act of eventually releasing the file to you, admitting that you have jurisdiction over that file, otherwise it would never be released? Most of these seem to be matters of delay.

Ms. Morrison: That was the point about never having had a jurisdictional dispute per se. What has happened in many cases is that there has been a dispute about our jurisdiction through correspondence at the beginning of the file. There may have been a dispute about whether, even if we had jurisdiction, we could get disclosure. In the end, we have either obtained the documents or not, but that does not mean we do not have the same difficulties the next time.

Mr. Philip: But in releasing the file, is that not an admission of jurisdiction?

Ms. Morrison: Yes.

Mr. Bell: Mr. Philip has helped me focus it. Let me state it this way. In the past, there have been certain jurisdictional questions raised arising out of particular matters that you attempted to investigate. Regardless of how that issue has been resolved, when you have pursued what you believe to be a jurisdictional investigation, you have been met with other positions by the public trustee and his office as for access to all of the file, access to all of the information, timeliness of response and you even get into matters of courtesy and appropriate dealings. Is that a fair statement?

Ms. Morrison: Exactly.

Mr. Bell: All right. With reference to the particular case summaries, can you give the committee a representative sampling of how those difficulties have occurred in the past?

Ms. Morrison: Each of the complaint summaries sets out a particular set of difficulties which we may have had. Some of them relate to a question of jurisdiction at the beginning of the investigation; others relate just to delays and difficulties in contact between our offices. For example, complaint 2 is a little easier than complaint 1.

Mr. Bell: I was hoping you would do complaint 1 since it looks to be pretty fundamental in terms of that quote.

Ms. Morrison: Complaint 1 and complaint 2 are connected and the correspondence was about both of them.

Mr. Bell: All right.

Ms. Morrison: As it says, the complainant in case 1 is complaining about delay of payment of expenses by the public trustee and brings his complaint to us. He also complained about the lack of promptness in answering correspondence and telephone calls. The public trustee allowed us to review the file initially, but would not allow us to have any photocopies of documents. Also, my understanding is that there was a time limit on how long the investigator could view the file.

In the end, the executive director of our office sent a letter to the public trustee asking that the files be provided. The public trustee did provide the files, and we, to be fair, put in the quote from his letter which suggests that he did not believe it was necessary for him to do this but that he was doing it at the request of the Ministry of the Attorney General.

The second complaint which is related to that--and we got the file in exactly the same way, by a letter from the executive director--indicates a response we often get from the public trustee; that is, the complainant should pursue his or her remedies in court. This is often a response that we have had. We have many complainants who cannot afford to pursue their remedies in court. That is why they are at our office. To us, that does not answer the question of access.

Mr. Philip: May I ask a question on that?

Ms. Morrison: Sure.

Mr. Philip: Would this be the type of case where one would likely be able to obtain legal aid assistance in pursuing it through a court?

Ms. Morrison: A number of our complainants either have not been able to get legal aid or the type of complaint that they make to us is not suitable to a court. We have complaints about delay or complaints about mail not being forwarded, the type of thing for which one does not generally see the courts as a remedy.

Mr. Bell: Anything else?

Ms. Morrison: I could go through the complaints one by one, but they all indicate the same type of problem. We are not talking about the merits of the complaints. As you see from the summaries, many of the complaints have not been supported. We are not suggesting that all these complaints are meritorious. What we are suggesting is that even to find out that they are not meritorious, we need better access than we are getting.

Mr. Bell: Absent the disagreement with Mr. Morand that I want to talk about in a minute, is it fair to say that the fundamental reason for the differences between you rests with a different view of whose legislation is paramount? The public trustee believes his legislation is paramount over yours, whereas you believe yours is paramount over his in terms of your function. Is that fair?

Ms. Morrison: That is part of the problem, but if it were the whole problem, it could have been solved through an application to the court.

14:40

Mr. Bell: All right. What else is the problem?

Ms. Morrison: The problem is that even when there is no dispute about jurisdiction or paramouncy of legislation, we do not get the kind of co-operation we think is necessary to investigate appropriately the complaints brought to our attention.

Mr. Bell: That may be a product of the first one. We do not know, but let us not surmise. Before the members of the committee have questions of you and your staff, Dr. Hill, and before we ask Mr. McComiskey to comment, can you tell us a little more about this agreement with Donald Morand that you are no longer prepared to abide by?

Dr. Hill: It is simply that Mr. Morand agreed to let Mr. McComiskey look at the file, cull the file and at that point give the Ombudsman the information the public trustee felt was relevant. As the new Ombudsman, I took the position that I did not have to abide by that agreement. I felt that a file should not be culled, that there were grave dangers in culling a file and separating out material. I did not know anything that was going on there. This was the point of difference and I decided at that point I would object to the file not being given to me in full form. Therefore, I said I was not bound by, nor should I be bound by, an agreement made by previous Ombudsmen since I was the current Ombudsman.

Mr. Bell: If that agreement is in written form, it is something the committee should see, Dr. Hill.

Mr. McComiskey: I will be glad to produce a copy of the letter that sets it out, Mr. Bell.

Mr. Bell: What do you understand to be Mr. Morand's reasons for agreeing to that arrangement?

Dr. Hill: I wish I knew. That is the only way I can answer it.

Mr. Shymko: May I have a supplementary? Surely agreements struck by previous Ombudsmen are not binding on you.

Dr. Hill: That is right.

Mr. Shymko: There is nothing in your mandate that says you should follow agreements similar to those established in the past.

Dr. Hill: That is the position I have always taken.

Mr. Bell: We need to see a copy of it. What are your reasons for not agreeing to abide by it?

Dr. Hill: I said earlier, there are grave dangers in culling a file, particularly when the Ombudsman does not know what has been culled. You cannot give a fair, dispassionate and impartial investigation if you receive a partial file. My understanding is that the Ombudsman sees everything. He sees a complete file. That was my basic reason for objecting.

Mr. Shymko: With your permission, Mr. Chairman, I cited case 1 as being pretty fundamental to this issue. The reply you received from the public

trustee in that case, where he says the Attorney General requested that the public trustee make available the entire file when an investigation is being conducted by the Ombudsman--in other words, do you see that statement reflecting the position you maintain that whenever you carry on an investigation, the entire file must be provided? That has been the interpretation of the Attorney General's office.

Dr. Hill: That is the way I look at it. I have talked to both Attorneys General, Mr. McMurtry and Mr. Scott. I have no reason to believe otherwise.

Mr. Shymko: In other words, notwithstanding that the public trustee disagrees with that, the position is that he should provide the entire file.

Dr. Hill: That is my feeling.

Mr. Shymko: Notwithstanding whatever his interpretation is of whether you have jurisdiction, he must provide that.

Dr. Hill: I have had no communication from past Attorney Generals or Deputy Attorneys General to make me believe otherwise.

Mr. Shymko: Is there a document from the public trustee so that this request from the Attorney General can be made available to the committee? I am sure that request came to the public trustee from the Attorney General's office in that case. Is it possible to obtain a copy of that letter from the Attorney General's office?

Mr. McComiskey: I cannot say how that came.

Mr. Shymko: You quote from it. You refer to it in your letter to the Ombudsman.

Mr. McComiskey: Yes. I do not have any correspondence with me, let me say, and I will explain how that came about, if you wish.

Mr. Shymko: Surely you must have a copy of the letter from the Attorney General directing you or requesting you to provide all information when the Ombudsman's office is carrying on an investigation in your office.

Mr. McComiskey: There is no letter from the Attorney General.

Mr. Shymko: It was not a letter?

Mr. McComiskey: I am saying it was not from the Attorney General. I think the letter came from Mr. Grant, not from the Attorney General himself.

Mr. Shymko: I see. Therefore, when you say, "I have been requested by the Ministry of the Attorney General," you refer to the deputy minister.

Mr. McComiskey: It was a decision by the then deputy minister relayed to Brock Grant and relayed to me.

Mr. Shymko: You do not consider that a statement by the Attorney General?

Mr. McComiskey: Yes. I consider it a statement, but there is still a fundamental problem there. I am not saying whether or not I am right. I am

delighted to be here because I would like to set out to you the problem. One of the concerns I have is that I do not think either the public trustee or any of his staff should be asked to break the law. That is a concern of mine.

Mr. Shymko: Just to complete my questioning, if there is such a letter or anything documented substantiating your statement in the reply to the Ombudsman, could you provide that to the committee?

Mr. McComiskey: I would be glad to.

Mr. Philip: I have some questions for Dr. Hill and will have some questions for Mr. McComiskey later.

Considering the secrecy provisions in the act, can you envision any reason Mr. Morand would enter into an arrangement whereby the public trustee would have a right to cull or censor, if one might use a different word, the files before you get them?

Dr. Hill: I wish I could understand it. I will say again, I see no reason. I have nothing I can remember in the correspondence that would give me a reason for that. Let me ask one question of my general counsel. Have you seen anything to that extent?

This is Mr. Zacks, the general counsel, who was there before I was and who might be able to answer that question.

Mr. Zacks: I am afraid I cannot be of any assistance. I was not privy to the discussions. The decisions and discussions about this matter were between Mr. Morand and Mr. Goodman and none of the rest of us was involved in it. I am sorry; there is nothing I can add.

Dr. Hill: There is no written rationale that I can perceive. I have no written rationale for that.

Mr. Philip: Is there any other matter over which you have jurisdiction where there is a culling of the file before you receive it?

Dr. Hill: None whatever that I know of; no other government agency I am dealing with. Even with the Ontario Provincial Police, the files are not culled and they are not separated out.

Mr. Philip: There has never been a security problem with your office where a person's personal right to privacy has in any way been jeopardized as a result of your investigation?

Dr. Hill: We have a major confidentiality provision in our legislation; therefore, absolutely not.

Mr. Philip: Do you know of any other jurisdiction where an Ombudsman is operating where this culling practice is in effect?

Dr. Hill: I know of no other. I am in fairly close contact with nine other provincial ombudsmen; we compare, talk and discuss and I do not know any other precedent for this.

Mr. Philip: In those other jurisdictions, at least in Canada, is it your understanding that the Ombudsman has a right to investigate the files of the public trustee?

Dr. Hill: As far as I know. Yes.

Mr. Zacks: To my knowledge, there is no jurisdiction in Canada where the Ombudsman is prevented from investigating a public trustee complaint.

Mr. Chairman: Mr. McLean.

Mr. McLean: My question has been answered.

14:56

Mr. Sheppard: I have a question for Mr. Bell. Have you had a look at the jargon that gives the Ombudsman the authority to look into these matters, and have you looked at the jargon wherein the public trustee has the right not to give out any information whatsoever?

Mr. Bell: Mr. Sheppard, we are going to examine in a short while two sections of two acts, the Public Trustee Act and the Ombudsman Act, the former imposing certain duties of confidentiality on the public trustee and the latter apparently qualifying the Ombudsman's right to certain information from people who have certain obligations of secrecy imposed on them. That is one of the issues that must be addressed and must be understood. I will reserve that discussion until after Mr. McComiskey has an opportunity to make full comment in response to anything Dr. Hill or his staff raised either today or in the material before you. Yes, I have my views, but I would sooner reserve those until the discussion is completed.

Mr. Sheppard: Mr. Chairman, I am glad that he is going to reserve his views, but I am not convinced here so far this afternoon who really has the power, the public trustee or the Ombudsman. I can wait until we discuss that further.

Mr. Bell: I think it is best to reserve those types of discussions until Mr. McComiskey has had adequate opportunity.

Mr. Hennessy: Looking at it, you as a legal person know that the trustee is more or less an arm of the legal aspect of the way things are handled in Ontario. If it gets so that the Ombudsman has the authority to get the information, then you probably could do a disservice to the courts to some extent. It is not as easy as it looks. Are you going to give one committee all the power over everybody and then the courts are going to be secondary to the Office of the Ombudsman when it comes down to brass tacks?

There are two ways to look at it, as far as I am concerned. If you are in the legal profession and you have something that is very confidential, lawyers are supposed to be close-mouthed, I guess. Maybe in the case when they are asking for their fee they are not, but outside of that they are very close-mouthed.

Mr. Bell: I have never hesitated.

Mr. Hennessy: No. I know that. You speak well for yourself. I am a little apprehensive about the thing. If the Ombudsman receives a rebuttal and we decide to take on the public trustee and change that aspect of it, it will then make a lot of information that is very confidential become susceptible to be leaked to the general public or to different people. I am a little concerned to some extent about that.

Mr. Bell: Mr. Chairman, if there are no further questions of Dr. Hill or his staff, I would like to ask Mr. McComiskey--as he is best advised, knowing all of the background flowing from Dr. Hill's comments in his last report as expanded and particularized in the subsequent material--can you tell us, first, what you perceive to be the source of the difficulty and what is your position and that of your office in respect of Dr. Hill's concerns and comments?

Mr. McComiskey: First, I think I should put this in perspective. My office does a great many different things, but at the present day we have about 65,000 active or potentially active files. I did not go right back to 1977, but I went back to 1979 to look at how many complaints had been made to the Ombudsman from 1979 right up to today; and there have been a total of 54 complaints. That has been on a pretty steady number each year, approximately six to eight complaints. Out of those 54 complaints, I think in only four was a report made supporting the complaint. In other words, we have about one complaint for every 8,000 files we handle.

When the complaints do come, they have basically come in one of two areas. They have come in the area of a mentally incompetent's estate. I think in only four cases out of the 50 has there been a complaint in connection with a deceased person's estate.

When one looks at the complaints in a mentally incompetent's file, we have all kinds of information in there. We have medical information, psychiatric information and financial information; we have what I might describe as social information: that is, reports by neighbours about the patient, reports by child against parent or sibling against brother or sister. Therefore, I am very concerned about letting that information go outside.

I would like to come back to the itemized complaints 1 and 2, because I do think they set out pretty clearly the kind of problems we face. Before there was an Ombudsman or before there was the confidentiality section in the Public Trustee Act, courts had always been concerned about disclosure. I go back to a case in 1967, decided by Mr. Justice Donahue. It had nothing to do with an Ombudsman and nothing to do with the acts as they now exist, but what he said in that case was that the position of the public trustee of Ontario is a unique one. He is the guardian and protector of the estate of persons of unsound mind, and he has other functions; for example, representing persons of unsound mind who are parties to divorce proceedings. As between these persons and the public trustee, there is a relationship not unlike that between solicitor and client. There is, or there ought to be, a kind of confidentiality between the public trustee and the person for whom he is statutory defender.

We move on from that case until 1971. I am sure you realize from what I said at the beginning that I was not with the public trustee's office at that time. However, in that year an amendment was made to the Public Trustee Act that put a requirement of confidentiality on my office and on my staff. That section, section 18, reads as follows:

"Every person employed in the performance of the duties imposed upon the public trustee by this or any other act or by the Lieutenant Governor in Council shall preserve secrecy with respect to all matters that come to his knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to his legal counsel except as may be required in connection with the administration of this act," the Public Trustee Act, "and the regulations under this act or any proceedings thereunder."

That section came in. My first dealings with the Ombudsman were in the time of Mr. Maloney, and my attitude at the time was that if there was any complaint about my office, I was the first one who wanted to know about it. I was very anxious to know about the complaints, and the result was that they were brought to me personally and I would look at the files to see what the story was. From the outset, I took the position that, because of section 18, I could not disclose the files. I took that, supported by the background thought that I had a duty to the patients or estates I represented.

There is one further problem that comes into it. I mentioned that in the decision of the court Mr. Justice Donahue made an analogy between the position of the public trustee and that of a lawyer. In fact, sometimes I am acting as lawyer for a patient. I may be prosecuting a claim for automobile damages; I may be acting in a divorce, as was the case that was before the court; I may simply be selling a house. But there are many instances where I am acting as a lawyer for the patient. The Law Society of Upper Canada has a rule that is imposed upon all lawyers: that a lawyer has a duty to hold in strict confidence all information acquired in the course of a professional relationship concerning the business and affairs of his client and should not divulge any such information unless he is expressly or impliedly authorized by his client or required by law to do so.

15:00

I had the rules of the law society, the confidentiality section of the Public Trustee Act and the general attitude of the court, entirely apart from my professional feeling that I should protect the information of people who were in mental hospitals. I took the position right from the beginning that I could not open my files completely.

I must say I thought things went along pretty well. Investigators would come in and I would get out the file. Without fail, when I got a complaint from the Ombudsman, I immediately wrote back and said, "Here is our explanation." When an investigator came to my office, I would get out the file and say: "Here is what happened. Here are the documents or correspondence relating to the complaint made to you." I do not really think there was any difficulty about it.

I disagree with the statement that I or anyone in my office was discourteous to anybody from the Office of the Ombudsman, with one possible exception. Many years ago, there was one investigator who came in and upset the staff she interviewed. My deputy, the chief accountant and my chief estates officer were all concerned. I thought this investigator was going way beyond anything reasonable or sensible from either her own office or mine.

At the time, I discussed with Mr. Morand the fact that the investigator was a problem. He asked me whether I wanted to have her taken off the case. I said: "I do not think that is my right. She is your investigator. You have to decide who is on it, but I tell you, there is a problem." I think eventually in that case he took her off and I have not seen the young lady since.

As far as I am aware, there were no problems in my relationship with Mr. Maloney. It so happened that at that time Mr. Maloney's office was downtown, as is mine. By happenstance, Mr. Maloney and I would often meet in the Sheraton Centre. If we had any problems, we had an informal discussion, usually in Laura Secord's on Friday afternoons. I was not aware of any problems.

Mr. Bell: There has been a rash of disclosures of favorite meeting places this summer at the Legislature. We just found another one. Somebody else just got free credit for hosting you.

Mr. McComiskey: Mr. Justice Morand became Ombudsman and raised the question of confidentiality. I was asked to meet with him. When I got to a luncheon engagement, I was rather surprised that he had all his legal staff with him. I think there were five lawyers at the time. I laughingly said, "Why do I get the impression I am being leaned on?" He said, "Oh no, you are not being leaned on."

We met and the issue that day was the question of confidentiality. Later, in some correspondence between us in connection with other matters, a jurisdictional question arose. I was again invited to lunch with Mr. Morand and his then legal director, Mr. Goodman. We discussed the question of confidentiality and I thought we worked out a reasonable compromise.

I do not profess to be a close friend of either of the first two ombudsmen. I tangled with Mr. Maloney at times in court and I appeared before Mr. Justice Morand in the courtrooms. But at the time of that meeting, Mr. Justice Morand agreed that I was bound by section 18 of the Public Trustee Act. Mr. Goodman wrote me a letter on February 4, 1981, acknowledging the implications of section 18 and agreeing to the arrangement that I personally would cull the file and bring out anything that had to do with the complaint made to the Ombudsman and produce copies of it for him.

Having done that, we continued under that arrangement until Dr. Hill became Ombudsman. My difficulty is that I do not want to disclose information because I have a duty to the patient. I have the problem of my professional society rules and I have the section of the Public Trustee Act.

I am not entirely happy with section 18. There is a proposal, in amending mental incompetency legislation, to put a somewhat different confidentiality section in which it would say that I could make disclosure if it was in the best interest of the patient, but I do not think that would have a bearing on the problem that is before you today.

I think my office and certainly my ministry have tried very hard to be co-operative within the confines of the law to which I must subscribe. Apart from the question of confidentiality, there is another problem that comes up; that is, the question of jurisdiction.

Subsection 15(4) of the Ombudsman Act says, "Nothing in this act empowers the Ombudsman to investigate any decision, recommendation, act or omission, (a) in respect of which there is, under any act, a right of appeal or objection or a right to apply for a hearing or review on the merits of the case to any court or to any tribunal constituted by or under any act, until that right of appeal or objection or application has been exercised in the particular case or until after any time for the exercise of that right has expired...."

The complaints to the Ombudsman have arisen in the mental incompetency area or the deceased person area. In the estate of a deceased person--and as I said, I think there have been only four complaints in that area--I have to apply to the surrogate court to be appointed executor or administrator of the estate. I must then act as a trustee responsible to the court. If I do not do my job properly, then the beneficiaries of that estate are entitled to apply to the court to have me removed as administrator or executor or to cite me to appear before the court to pass my accounts.

I make it plain that under the surrogate court rules--and this is one of the difficulties; I doubt there is any field of law that is more complicated than the trust field--it is provided in section 74 of the Surrogate Courts Act that the judge is given extremely broad powers. Subsection 74(3) says:

"The judge, on passing the accounts of an executor, administrator or such a trustee, has jurisdiction to enter into and make full inquiry and accounting of and concerning the whole property that the deceased was possessed of or entitled to, and the administration and disbursement thereof in as full and ample a manner as may be done in the master's office under an administration order, and, for such purpose, may take evidence and decide all disputed matters arising in such accounting, subject to appeal."

15:10

There is a whole hierarchy and system of reviewing my acts as an executor or administrator. I am glad to say that in only one case in the 10 years I have been in the public trustee's office has anybody ever asked us to pass our accounts, but there is a procedure there. Similarly, when I am acting under the Mental Incompetency Act, there is an application made to the court where the court decides that somebody can act as a committee; it can be an individual, trust company, stranger, member of the family or the public trustee.

When those orders are made by the court, the court "propounds a scheme," as it is called. The public trustee or whoever the committee is must act in accordance with those directions of the court. I tell you quite honestly that the courts usually give me much broader discretion than they give a private committee, but again those court orders require the committee to appear periodically before the court and account with the same kind of background I have already referred to in the Surrogate Courts Act.

Somewhat different is the appointment of the public trustee under the Mental Health Act. There it is not a court order; it is a certificate issued by an attending physician who says the patient is incapable of managing his own affairs and the public trustee then, by statute, becomes committee.

When I am acting in that capacity there is still a section in the Mental Health Act that requires the public trustee to account; that is section 54. I am not going to read the whole section. It says, "The public trustee is liable to render an account as to the manner in which he has managed the property of a patient or an outpatient in the same way and subject to the same responsibility as any trustee." That brings me right back to the role of the surrogate court.

There are two problem areas. The first is the question of confidentiality, and the second is the question of jurisdiction. If I might deal with the first two examples--I might say I am surprised to see some of these cases cited as examples of my nonco-operation. In 11 of the cases referred to here, I have letters from the Ombudsman's office thanking me for my co-operation. I have letters in virtually two thirds of those cases, saying, "Thank you very much for your co-operation and the co-operation of your staff." Let me look at the first two complaints.

A mental patient who had been under the care of the jurisdiction of the public trustee for some years died. She left an estate of \$4,700, and she died without a will. Basically, when a patient dies my responsibility is finished; but there is a provision under the Mental Health Act that says that until

the public trustee gets letters of administration or letters probate, he is entitled to act as executor or administrator. In this case, we did not know who the heirs were. We got a telephone call from a funeral director in Sarnia, saying he had been asked to provide a funeral. The estates officer said: "We have very limited funds. The most we could spend on a funeral in this case would be roughly \$1,350."

One of the difficulties I face is that the law requires me or any executor or administrator to provide a funeral commensurate with the size of the estate and the position of the individual in the community. When you are trying to exercise that discretion, you run into all kinds of different problems.

If the deceased happens to be of the Jewish faith, there are expenses--for ceremonial cleansing of the body, prayer shawls and watching the body--that you do not get in a Christian burial. Where you look to an estate of somebody of Czechoslovakian or Polish origin, not only do you have to look at the funeral but you also have to look at the expenses of the wake. If you get somebody from the Greek Orthodox church, you have five religious observances that have to be provided for nine days, 30 days, three months, nine months and 12 months after death. There is a certain expertise that one has to have in dealing with funerals, and we deal with roughly 325 funerals a year.

In this case, we did not know who the heirs were. The funeral director who approached us was told what we could do. He went ahead and, as far as we were aware, conducted the funeral, and we paid his account. Subsequently, we got a funeral bill from an entirely different funeral director in an entirely different part of the province. We had had no contact with that funeral director, nor had we had any contact with any heirs.

Eventually, the heirs did contact us. The funeral account had then become a problem. They contacted us and we said, "If you can establish that you are the proper heirs, we will pay what we have to whomever you tell us to pay it to."

They consulted one of the largest law firms in Toronto. We explained our position to the law firm, and they eventually established heirship. We then got instructions from the heirs to pay the funeral director something less than the amount he was claiming for the original cost plus accumulated interest. I did not negotiate the settlement; the heirs did.

Mr. G. I. Miller: Did you say it was paid twice?

Mr. McComiskey: No. There were two different funeral directors. We paid the one in Sarnia what we had contracted for. We had no contract and no communication with the other one at all; so I would not pay him and did not pay him; the family did. The total cost of the funerals of the two arrangements turned out to be about \$4,200 out of the \$4,700.

Mr. Shymko: Just to bury one body?

Mr. McComiskey: To bury one body.

Mr. Bell: In two parts of the province?

Mr. Hennessy: Did they bury him twice?

Mr. McComiskey: No. I think what really happened was that the funeral director in Sarnia picked up the body and did the embalming, and then

the body was shipped from there to another part of northern Ontario, where the burial was arranged, because one of the nieces lived in that centre.

The side part of that same complaint is that in the same centre where the first person was buried, a little handyman of Polish extraction died one night. He had no relatives as far as anybody knew. A rumour went around the community that he had \$250,000 hidden away somewhere, but we could not--

Mr. Philip: Are we on complaint 2 now?

Mr. McComiskey: It is really part of complaint 1, Mr. Philip, because there are two parts to it.

Mr. Philip: Okay.

15:20

Mr. McComiskey: This little man died. He had no family and no heirs, and the public trustee was then brought in under the Crown Administration of Estates Act. At that stage we know nothing about the man's assets or his liabilities. We knew he had a car, and that was the only thing we knew about. We heard the rumours of other things and, as a matter of fact, we were going to strip the car right down, take off tires, doors, everything, looking for the money. We could not find any trace of the sum, but at that stage we also had no idea of his liabilities.

We received a funeral account. Again there had been no consultation with my office. There had been no communication at all and the estates officer in charge of the file sent it back to the funeral director and said: "We have nothing to do with this account. You had better send it to the person who arranged the funeral. He should pay you, because it is with him you have the contract. He should pay you and then he can submit his account to the public trustee for consideration if, as and when we get money."

Nothing happened about it until more than a year later, when we again received the account from the funeral director. It turned out the man who arranged the funeral owed \$30,000 on a promissory note to the deceased. We had to sue him on the note, and we have obtained a judgement against him. By the time we looked at the account, we had sold the car and had about \$11,000 in the estate. We had no income tax clearances, which often presents a problem to me. While I would not have paid so much in an estate of \$11,000, we felt at the time it was not entirely unreasonable. Therefore, I would pay the account but not accumulated interest. After getting his agreement, we sent a cheque to the funeral director for the original amount of the funeral cost.

The funeral director then complained to the Ombudsman. One of the things the Ombudsman has provided is a consent by the funeral director to disclosure of the two files. There is nothing in the files that relates to him except his funeral bill. Why should the funeral director, who never had a contract with my office at any time, be entitled to have anybody, including the Ombudsman, go through the file where there are a lot of things that have nothing to do with his account? In the case of the deceased person, why should the funeral director be entitled to go through the file when he has a business relationship with the man who ordered the funeral, against whom I have had to start court action? That is the kind of problem I am faced with.

Mr. Philip: Sorry. You are confusing me. It is not the funeral director who is going through the file. It is the Ombudsman who is going through the file.

Mr. McComiskey: I realize that, but I am saying--

Mr. Philip: You said, "Why should the funeral director have the right to go through the file?" Nobody is asking the funeral director to have the right to go through the file.

Mr. McComiskey: But the funeral director was authorizing the Ombudsman to go through it.

Mr. Philip: That is irrelevant. The issue is that the Ombudsman, not the funeral director, wanted to go through the file.

Mr. McComiskey: What I am saying is that the consent from the person who is giving the authorizing had nothing to do with either one of the files. I come back to my original problem, section 18 of the Public Trustee Act.

Mr. Bell: Mr. McComiskey, unless you want to go through any of the other complaints, I would like to give some further focus to your position. I am not sure which is the order of priority, but are you saying, as reflected by the position you have taken on various Ombudsman investigations with regard to subsection 15(4) of the Ombudsman Act, the so-called premature complaints section, that until you are discharged by the court on an order, there is no jurisdiction on the part of the Ombudsman to investigate any complaint that may arise during your administration of any fulfilment of any responsibility pursuant to a prior order of the court?

Mr. McComiskey: I do not know if that is precise. I am saying where the complaint relates to any of my duties on which there is a procedure before the courts on review of my action, I do not think the Ombudsman has jurisdiction.

Mr. Bell: The reason you say you do not think he has jurisdiction is that complaint can be taken up with the court?

Mr. McComiskey: Yes.

Mr. Bell: The court can be asked to rule on that complaint and to do whatever may be appropriate in the circumstances. Is that right?

Mr. McComiskey: That is right.

Mr. Bell: Let us test that for a moment with one of these first two examples. In your duties as an executor pursuant to the Crown Administration of Estates act, do you have to report finally to the court?

Mr. McComiskey: No. I have to report it to the beneficiaries. If the beneficiaries were not satisfied, they could ask me to report it to the court.

Mr. Bell: In that case, it is not a situation where you will go back to the court as a matter of course?

Mr. McComiskey: No, not as a matter of course.

Mr. Bell: Let us take an example of an appointment of you as committee.

Mr. McComiskey: Yes.

Mr. Bell: You have to go back, and that has to be a matter wherein the court finally discharges you?

Mr. McComiskey: Yes. That is under the Mental Incompetency Act.

Mr. Bell: It is under the Mental Incompetency Act. Let us assume a person who is doing business with that estate is owed some money, and the complaint is that the account has not been paid in a timely fashion; when the creditor has sought payment, letters have not been answered and telephone calls have not been returned. Is that a situation you say is out of the Ombudsman's jurisdiction until the courts finally discharge you?

Mr. McComiskey: I think so, because that person could sue me for payment of the account. The person would have every right to sue me in whatever court was appropriate.

Mr. Bell: Let us go at it from the other side. Are there any circumstances wherein you fulfil any responsibilities where the Ombudsman does have jurisdiction before the courts discharge you from those responsibilities or otherwise deal with things you have done?

Mr. McComiskey: Yes, there are places.

Mr. Bell: Such as?

Mr. McComiskey: For example, I act under the Escheats Act, which is acting for the crown itself. These days, I am getting claims for commissions on finding assets, and that decision is actually a matter for the Lieutenant Governor in Council. But I can see the possibility that some day one of these tracing agents would complain that I did not put a suitable recommendation to the Lieutenant Governor in Council. There I am not answerable to the court; I am answerable to the government itself. In that kind of case, I think the Ombudsman would have jurisdiction.

Similarly, I have some duties under the Corporations Act, and I am required at times to give consent to the revival of corporations. If I did not give that consent, it is not a court procedure; but I think the dissolved company seeking the consent might go to the Ombudsman and say, "The public trustee is withholding consent improperly." That is not a court matter, and that might very well come into the Ombudsman's area. There just have not been any complaints in those areas.

15:30

Mr. Bell: Do I take it, though, notwithstanding the jurisdiction issue and if we assumed there was a case that was clearly jurisdictional as far as you were concerned, that the Ombudsman is still confronted with your section 18, which you have interpreted as saying: "Even though a case may be jurisdictional, my staff and I still have that duty of confidentiality. I cannot identify anything in your legislation, Mr. Ombudsman, that permits me to override that duty of confidentiality"?

Mr. McComiskey: That is right.

Mr. Bell: Okay. Before I shut up and the members of the committee have questions of you, there is a third element in Dr. Hill's concerns, and I would like you to comment on it. This is that, regardless of jurisdictional or nonjurisdictional, confidentiality or openness, there is a certain attitude in

your office described as unco-operative, discourteous, failure to return phone calls, not subjecting yourself to questioning by Ombudsman staff. This appears to be irrelevant to jurisdictional and confidentiality questions; it just has to do with a good working relationship between two offices. Will you comment on that, sir?

Mr. McComiskey: Yes, I will be glad to. As far as I am concerned, I have extended every courtesy to any representative of the Ombudsman's office. I do not know Dr. Hill. I have met him for five minutes in my life before today.

Dr. Hill: We met in your office--

Mr. McComiskey: That is the only time.

Dr. Hill: --for 45 minutes or an hour.

Mr. McComiskey: I did not think it was that long.

Dr. Hill: It was quite a while.

Mr. McComiskey: That is the only day. We have met once in my office.

What has happened in the past? As I say, initially I thought the appointments were very pleasant. I would have said that there could not have been any question of discourtesy.

There was this one incident where a girl came in. I do not think this girl is with the Ombudsman's office any more, but she spent hours and hours of time asking questions about matters that were not part of the complaint at all. She came in to me one day unannounced and started to ask questions that there was no way I could answer on the spur of the moment.

For example, this had to do with an investigation in northern Ontario. One of my investigators--and it is one of the ones referred to here--had gone into the home of this lady who had been certified and had found a little metal strongbox. As part of their investigative duties, they had to force open the strongbox in order to find out what was in it. There were also articles in the garage. It was an old garage, shut by a wooden bolt. In order to get the garage open, they broke the bolt. There was no question my man did that, but there was some allegation that my investigators had stood on the kitchen stove. They said they had not, and I had no reason to disbelieve them.

My investigator said that at the time he went into the house, he was accompanied by a neighbour of the patient. This investigator came in that morning and asked, "What was the name of the neighbour?" There was no way I knew the name of the neighbour; I could not answer that question. I thought it was a waste of my time and of the investigator's time. If she was going to ask questions of a specific nature such as that, (a) she should make an appointment ahead of time and say she was coming and (b) she should give me some idea of what she was looking for so that I could have some way of getting the answer. It so happened that my investigator was out of town again, so I--

Mr. Bell: Let us talk about the agreement between you and Morand. Dr. Hill says he does not and will not abide by it; he does not agree with it. What is your reaction to that?

Mr. McComiskey: As he knows, I said to him the day we did meet that

I was surprised he would not accept that decision, and the reasons he gave are the ones today. I thought Mr. Morand and I had canvassed the situation with his then legal director and with his whole legal staff, in effect, and had worked out a compromise that was sensible from all points of view. It may be that since I had some slight acquaintanceship with both Mr. Maloney and Mr. Morand, they were prepared to accept my personal, professional and positional integrity. We had discussed the fact that I was as anxious to get to the bottom of any complaint as anybody else. I thought the compromise made with Mr. Morand was a sensible one.

Mr. Bell: Has the reception that has been afforded to Dr. Hill's representatives who have attended your office been cooler since he informed you he would not abide by that agreement.

Mr. McComiskey: Only to this extent: We now have got into Never Never Land on some of these problems because, after being in my office, Dr. Hill went directly to the deputy minister. Neither the public trustee nor, I am sure, the Ministry of the Attorney General want to be hiding anything to which the Ombudsman is entitled by law.

Some problems arose in item 2. The beneficiaries of the estate went to a law firm and indicated they might be taking me before the court. I took the position that until it was clarified as to whether there were going to be legal proceedings, the Ombudsman did not have jurisdiction in what happened. I questioned the jurisdiction there. What happened was that the complainants dismissed the law firm and said they were not proceeding through the court and, on the instructions that were relayed to me through Mr. Grant, we then produced the file, even though I personally have reservations about it.

I produced the file. As I recall the file, or maybe the first two files, an investigator--I have no complaint with this under normal circumstances except for this one case where an investigator came in without any pre-warning. The Ombudsman's office has always been perfectly courteous and sensible. They have phoned me ahead of time and said they were coming over on a certain day at a certain time. As far as I am concerned, there have been no problems.

On that one day, I took the girl, who came in to the library, and said: "Here are the two files. You can stay there and look at them. When you are through, will you please take the entire files back to my secretary." At that stage, at the end of that--I have forgotten the name of the investigator--she said, "What about copies?" I said, "That is your problem now, because, before, I agreed to provide copies, but your office would not accept it." If that is impolite, I would have to say, yes, I was impolite, because the Ombudsman had pulled back from the other--

Mr. McLean: You said you offered her a copy of the files.

Mr. McComiskey: No, she had the entire files. I produced the total of the two files, which are about this thick. When she had finished reviewing the files, the question put to me was, "What about copies?" I said, "That is your problem now because you would not accept my offer before," and that was the end of the conversation.

Mr. McLean: Offer of what?

Mr. McComiskey: To produce copies under the agreement made with Mr. Morand.

Mr. Bell: I guess this is the other side of the "not abiding by the agreement."

Mr. McComiskey: No, not entirely. I was just concerned that, with very thick files and really nothing to do with this funeral director, I did not want to be in the position of being asked to photocopy the entire files for them. What happened after that was that Mrs. Meslin, I think it was, wrote to me and said, "The Ombudsman's office wants to come in and pick up the files." She gave me a date. She said they would be there at 10 o'clock in the morning. They came at 10 o'clock in the morning. They picked up the files. I asked them to sign a receipt for the entire files, which they did. They took the files away and they were returned the next day.

15:40

Mr. Bell: All right. I have one last question. Do you have any suggestions on how these impasses can be resolved between your office and Dr. Hill's?

Mr. McComiskey: In so far as the confidentiality problem is concerned, that is a matter for the legislators. As I see the statute, I am stuck with it. I do not even like it myself, because there are times I would like to be able to divulge information for the benefit of the patient or the estate. I am not crazy about the section. If it is going to be changed, then the legislators will have to decide how much, if any, disclosure there is to be to the Ombudsman. I just do not think that is my prerogative. It may require a statutory amendment.

Mr. Bell: How about an application to the court?

Mr. McComiskey: That that would be a Divisional Court matter. Yes, that is a possibility.

Mr. Chairman: I have Mr. Philip, followed by Mr. Shymko, followed by Mr. Hayes.

Mr. Philip: What I find interesting is that you have had this jurisdictional dispute and section 18 dispute for--how long? Dr. Hill will be in office now for three years in March. What have you done either to go before the courts or go to the Attorney General (Mr. Scott) and ask that it be tested in the courts to resolve either of these problems?

Mr. McComiskey: Not in connection with any of the files that are present now. As I say, it was not a problem in earlier years. Mr. Maloney, Mr. Morand and I seemed to be--

Mr. Philip: I am not talking about earlier years. I am talking about the three years you have had this problem. What have you done about it?

Mr. McComiskey: There has been a proposal now. My ministry is aware of the difficulties, Mr. Philip. There has been a proposal in another case, which is none of those mentioned here, that the matter be taken to the court, not on the confidentiality side--although that may come into it too--but on the jurisdictional side. That is a proposal that has been made through Mr. Grant and, as far as I know, there has been no answer to that.

Mr. Philip: Did you make that proposal to the Attorney General? Who made the proposal to test it?

Mr. McComiskey: I think I made the proposal.

Mr. Philip: When?

Mr. McComiskey: It would be during this summer. I am not sure of the month, July or August. We discussed things back and forth. We discussed the law and the law that was applicable to it.

Mr. Philip: With regard to section 18, if we turn to case 11 on page 12, would you agree that is a section 18 problem at the bottom of the first paragraph? "The public trustee responded that his files were confidential, that he was protected by a solicitor-client privilege and that he did not want to provide access to the files." Is that a section 18 defence of not turning--

Mr. McComiskey: That, again, is a slightly different one, Mr. Philip. What happened in that case was an old man died on the streets of Vancouver with approximately \$100 in his pocket. The man was buried by the city of Vancouver. The public trustee of British Columbia was administering the estate. Among the papers, they found a deed to a property in Ontario. The public trustee of British Columbia asked us if we would help to try to dispose of the property.

As a matter of law, I have to apply to be appointed administrator in Ontario to deal with the real property. The piece of property sold for \$450 in 1967. I was really acting as agent for the public trustee of British Columbia. When I sold the property, I remitted the funds to British Columbia. It is a slightly different problem. While I was acting under court order here, there is a problem that I might be only acting as a legal agent for British Columbia and therefore I am into the law society.

Mr. Philip: Maybe I have picked the wrong example. Would you not agree that there are some cases where you have pleaded confidentiality as you feel it has been given to you under section 18 and where you have, in fact, released the file to the Ombudsman or his staff?

Mr. McComiskey: Yes, in two ways, Mr. Philip. In the first way, I have released parts of files under the agreement with Mr. Justice Morand. In the last little while--I would say the last year and a half--I have released files at the request of the previous Deputy Attorney General.

Mr. Philip: Therefore, would you admit that by your own analysis of section 18, you are in violation of your own act?

Mr. McComiskey: Yes, I do, and that concerns me. It concerns me for my staff.

Mr. Philip: Case 1 is the one where you were requested by the Ministry of the Attorney General to turn over the files to the Ombudsman. In your view, the Attorney General is asking you, or has been asking you, to violate section 18 of your own act.

Mr. McComiskey: I guess that is the position, but really what the Attorney General, or at least the Deputy Attorney General has been saying is, "We do not want to be seen as hiding anything from the Ombudsman." But I think there is still a problem with section 18.

Mr. Philip: When would the first instance be when someone from the Attorney General's office would have asked you to turn over a file which you

considered to be in violation of section 18 of your act and in which you complied?

Mr. McComiskey: Offhand, I would say a year ago.

Mr. Philip: At that time, would it have been reasonable for you to ask for a testing of section 18, either judicially or at least for a legal opinion from the Attorney General's office, so you would have some opinion on which to base your actions in the future?

Mr. McComiskey: Mr. Philip, I have made known my views to the Ministry of the Attorney General for 10 years. Yes, at the time this came up again, after Dr. Hill's appointment, an opinion was obtained from the Ministry of the Attorney General saying that section 18 did prevent disclosure.

Mr. Philip: How can you have an opinion from the Attorney General's office saying that your interpretation of section 18 is correct, that you are not allowed to disclose and, at the same time, instructions from the Attorney General's office asking you to disclose?

Mr. McComiskey: That is one of my problems.

Mr. Philip: Can you provide us with the documents that show that contradiction?

Mr. McComiskey: Yes. I cannot today, but I can provide you with the opinion and I can provide you with the letter. As I say, it came from Mr. Grant, who, I believe, was following instructions.

Mr. Philip: I can see that if this is the case, it puts you in a somewhat sticky position.

You compare your relationship with that of the solicitor and client. Would you not agree that there is a slight difference? If I wish to fire my solicitor, I can do so fairly quickly, whereas if I have to go the judicial route, which you are suggesting is open to the average person, it can be a very long process and most of the clients you have are not of the sophistication where it would be all that easy for them to do that.

Mr. McComiskey: I think it is a little dangerous to lump all the types of cases together. For example, you say it would be easy for a client to fire his solicitor. If you take an estate matter, the solicitor who is doing the work is employed by the executor. It is the beneficiary who might complain to the court. That beneficiary would not be able to discharge the solicitor. But if you are talking about a patient in a mental hospital, I agree it would not be as easy for that individual to get advice, although these days, of course, there is a whole patients' advocate society, and as I understand the proposals for new legislation, there will be more patients' advocates or former patients' advocates in the community, so I do not know that it would be more difficult.

15:50

Mr. Philip: My concern, and one of the reasons I have been a strong advocate of the Ombudsman system, is that it seems to me that people who are defenceless or who have less opportunity to defend themselves often get short shrift in the legal system because they simply do not know where to go or they do not have the resources to go there. That is why the Ombudsman's office was set up.

If you simply write off these people by saying they can go the legal route, in fact they do not get legal aid. I have sent people to try to get legal aid for matters that were in this general area and they have often had difficulty persuading legal aid to provide a certificate. The Ombudsman is an alternative to that. The route you are suggesting worries me because it seems to run contrary to the general philosophy that was adopted when ombudsmen were first set up in Sweden so many years ago and later adopted in Canada.

Mr. McComiskey: One of my concerns in my position has to be the patient. Understand that many of the complaints do not come from the patient; they come from relatives, people who perhaps stand to benefit from the patient contrary to the patient's best interests. Sure, I have to be concerned about patients being adequately represented.

Mr. Philip: As we read through these cases, I get the feeling that a majority of them are administrative delays. Would you agree that the courts are not the place to handle administrative delays?

Mr. McComiskey: Would I agree? In so far as they are administrative, yes, I would agree on that, but I do not think they are administrative. There are fundamental problems on some of them.

Mr. Philip: I can only tell by reading what I have here.

Mr. McComiskey: Let me give you an example, and this is the one that may go to a court decision. A woman was taken into hospital with a stroke early in 1983. Doctors often reserve decision on how much recovery there is on that, and in this case they reserved decision until December 1983. At that time they decided that nothing more could be done in the hospital, so they were certifying the patient to send her to a nursing home. They examined the patient, I think on December 4, and the doctor issued a notice of continuance. But he had not issued a certificate of incompetence that could be continued. This was drawn to his attention and the doctor then issued a certificate, although he dated it eight days later. It was based on the same examination but dated eight days later.

The daughter of the patient said she was going to apply under the Mental Incompetency Act and we said, "Fine; we will not oppose that." She then decided against that and, on the basis of the notice of continuance, we applied to the court under the Mental Health Act for directions. The daughter appeared before the court. It was Madame Justice Boland who heard the case, and she directed at that time that I was to continue the management of the estate for another six months.

After all that had been done, the daughter produced a power of attorney. Under the Powers of Attorney Act, there is an obligation on the recipient of the power of attorney, if they want to act on it, to notify my office and produce a copy of it. When the daughter produced the document, it was dated 1980 and it had a clause saying it would survive subsequent incompetency. However, that would not have applied when the lady was certified incompetent at the end of December 1983.

As you may remember, the Powers of Attorney Act was amended in December 1983. It said you could add a second clause to a power of attorney excluding the jurisdiction of the public trustee when a certificate of incompetence had been issued. A very neat legal problem is whether the amendments in December 1983 can make valid a power of attorney that was void under a 1979 clause.

The Mental Health Act says the public trustee must act as committee upon receiving the certificate of incompetence. I have no jurisdiction to inquire into the validity of the certificate, so I am bound to act. This is a case I think the courts may have to decide. Do I accept a certificate of incompetence even though there are some technical and mechanical difficulties?

Mr. Philip: I do not doubt that you can come up with cases where there was some justification for the delays. All I am saying is that when I look through this, at number 7, for example, and some of the others, the basic problem seems to be that there is a delay in access to the file and there are untold delays in the processing. In fact, there is the statement that you do not see that it is the concern of the Office of the Ombudsman. Surely, if there is anything the Ombudsman has jurisdiction over, it is administrative matters of government. Delay is an administrative problem.

Mr. McComiskey: May I direct my remarks to number 7? I do not think there was delay in our office. Our reply to the Ombudsman was prompt. This involved a man who owned, jointly with his wife, a property worth \$30,000 but subject to a mortgage worth close to \$22,000. The property was sold and we got half his share in our office. The man was out of the hospital but I do not think he was well. He came to our office and wanted to get his \$30,000 so that he could buy a gun to shoot his wife. He was completely mistaken about the facts. I think we reported those facts promptly to the Ombudsman's office. It then went back to the patient and could not get any further instruction from the patient. Consequently, the complaint was abandoned for that reason, rather than any delay in my office.

Mr. Philip: I am not going to rehear every one of these cases. I am sure you have an explanation for every one of them. It seems to me that administrative delay runs through a number of the cases and that is clearly under the jurisdiction of the Ombudsman. If you do not test it there, you do not test it in a court of law and there is no way in which the claimant can have any way of having a hearing within a reasonable time.

I do not know what the solution to it is. I am somewhat concerned that you argue protection under section 18 at one point, but then end up giving out the files anyway, apparently violating your act. You have gone almost three years, as far as we know, without asking until recently for any testing of it. We are left with the present set of problems.

16:00

One last question. Of all the areas for which you know the Ombudsman has responsibility, you seem to feel your office is dealing with matters that are very sensitive and very personal. One would not question that, but do you not see that the Ombudsman deals on a daily basis with matters that are just as sensitive under other ministries and other jurisdictions, that there has been no problem with confidentiality, and that in fact the people have been protected by the confidentiality section of the Ombudsman's own act?

Mr. McComiskey: I really do not feel qualified to comment on that. I do not know what kind of things the Ombudsman is investigating in other areas.

Mr. Philip: You have obviously read the Ombudsman Act and you know what jurisdiction he has. You are a lawyer and you have had some experience with a variety of matters. Are you suggesting those matters under your jurisdiction are more sensitive in a personal way than matters the Ombudsman handles?

Mr. McComiskey: I think they may be, because of the very situation of the patient involved. There are many touchy things. I think they may be more sensitive.

Mr. Philip: Without any evidence that the Ombudsman has ever leaked or done personal damage in any way to anyone by the release of information, either with regard to those matters under the public trustee or with those matters under any of the other tremendously sensitive matters he deals with-- for example--corrections, I guess I find it hard to accept your argument.

Mr. Shymko: I guess it is your word against the Ombudsman's about the interpretation of his jurisdiction over the public trustee's jurisdiction.

Mr. McComiskey: I am sorry?

Mr. Shymko: It is your word and your interpretation of the Ombudsman Act, particularly sections 15 and 20, versus the interpretation of the Ombudsman whether or not his office has jurisdiction over the office of the public trustee. Or is it the interpretation, for example, that the Attorney General's office has in a committee such as this that supersedes your interpretation, or that of the Ombudsman for that matter, if there is a conflict?

Mr. McComiskey: I suppose it is up to this committee or to the legislators to make it clear, or it is a matter that has to be somehow decided by the Divisional Court.

Mr. Shymko: In other words, you personally would have no objection to providing full access to all files and documents in your possession if you were clear that the Ombudsman had total jurisdiction and access?

Mr. McComiskey: That is right.

Mr. Shymko: At this stage, you are not clear on whether the Ombudsman has jurisdiction?

Mr. McComiskey: I do not think he has, but if it were clear--

Mr. Shymko: Your opinion is that he does not?

Mr. McComiskey: That is right.

Mr. Shymko: In what form do you see the resolution of this; an amendment to one act or the other stating it clearly?

Mr. McComiskey: I think that is a possibility, yes.

Mr. Shymko: Do you feel the interpretation given by the Attorney General's office or this committee would be just as acceptable to you?

Mr. McComiskey: No, because I do not think it is fair to my staff to impose what to me is a clear-cut duty under section 18 and then have me say to them: "That does not mean what it says. The Attorney General thinks you should ignore it." I think the change ought to be made in the legislation itself.

Mr. Shymko: The Attorney General's statement that you should open up all your files whenever the Ombudsman investigates your office is not acceptable to you?

Mr. McComiskey: It was not the Attorney General's statement. It was--

Mr. Shymko: Pardon me. I understand that the deputy minister, in making such a statement, speaks on behalf of the Attorney General. Would you not agree?

Mr. McComiskey: I think that is a matter of the hierarchy--

Mr. Shymko: It would be quite irresponsible for the deputy minister to make such a fundamental statement of principle, mandate and jurisdiction that would be contrary to the Attorney General.

Mr. McComiskey: I would think he would be.

Mr. Shymko: I would think so.

Mr. McComiskey: I have not discussed this with Mr. Scott directly, I might say.

Mr. Shymko: Do you feel a clear statement from the Attorney General that the Ombudsman's office, through his act, has total jurisdiction and should have access to all your files whenever that office investigates your office would be satisfactory?

Mr. McComiskey: I am employed by the Ministry of the Attorney General and I am bound by that. I do not know whether I would say it is satisfactory. I am bound by it.

Mr. Shymko: But it would be helpful in clarifying the dilemma in which you currently find yourself and in avoiding some of these constant problems.

Mr. McComiskey: Yes, sure.

Mr. Philip: Why would you not have asked for that by now?

Mr. McComiskey: It is a funny way it has developed. As I say, we do not get that many complaints over the years, and the way the complaints have come about, we have been thrashing around as to just what we should be doing with this.

Mr. Shymko: May I continue my questioning, with your permission?

Mr. Chairman: Yes, continue.

Mr. Shymko: Allowing for supplementaries whenever they are needed.

Actually, you have mentioned that out of 65,000 files, both active and potential, some 54 were cases dealt with between your office and that of the Ombudsman?

Mr. McComiskey: Yes.

Mr. Shymko: One out of 1,000 or so?

Mr. McComiskey: One in about 8,000.

Mr. Shymko: In 11 of the 18 cases cited here, the Ombudsman's office had thanked you for your co-operation?

Mr. McComiskey: Yes.

Mr. Shymko: It seems to me, as I look through all these cases, that your initial reaction is to deny access. Then in one case after another, sometimes there is a negative resolution and in others it is positively resolved. You deny it first, and then you eventually see that perhaps you should provide the documents and it is resolved.

Considering there are only 54 cases, would it not alleviate all this contention, polarization and confrontation between two very important public offices if you were simply to co-operate and provide the information that is requested by the Ombudsman? Surely both your office and that of the Ombudsman have the best interests of the complainant and of the citizens of this province in mind.

Mr. McComiskey: I thought we had worked it out with Mr. Justice Morand. I thought that is what we had done.

Mr. Shymko: You felt the agreement was satisfactory?

Mr. McComiskey: Yes.

Mr. Shymko: You feel that the change from Mr. Morand's position to that of the present Ombudsman, who sees that there are still complications, that it creates delays--you do not share that view, right?

Mr. McComiskey: There is the jurisdictional side of it as well, which has nothing to do with the--

Mr. Shymko: Could you not strike up an agreement with the present Ombudsman?

Mr. McComiskey: Dr. Hill made it plain in the one day I talked to him that he did not agree with his predecessor.

Mr. Shymko: I have two particular cases that are of interest to me, and those are numbers 11 and 12.

In number 11, your office failed to make attempts to locate heirs. I want to ask you something in the light of the example you have cited of that little Polish guy who apparently, according to the rumours, had \$250,000 stashed somewhere. Whenever these Czechoslovak or Polish estates come in, there is a firm by the name of Gordon Price that immediately comes out. When he hears of \$250,000, surely Gordon Price would be interested, since his firm represents 11 governments in eastern Europe and he tracks all these estates. If you were approached by Gordon Price, who has all of a sudden discovered some relative and beneficiary in Poland or the Soviet Union, do you provide him with information? Does he go for a court order? What process does he use?

Mr. McComiskey: He is acting for beneficiaries of the estate, of course, the people who are entitled to the money.

Mr. Shymko: Maybe. Does it go through the courts or does he deal directly with you?

Mr. McComiskey: It may go to the courts.

Mr. Shymko: But it does not necessarily have to go to the courts. Right?

Mr. McComiskey: No. We have a very strict heirship process, but if there is a question about it, then we do go to court to have it decided.

Mr. Shymko: Do you investigate whether the heirs he discovers are genuine?

Mr. McComiskey: Oh, very much.

Mr. Shymko: You do?

Mr. McComiskey: Very, very thoroughly.

Mr. Shymko: But he must have a sort of power of attorney in order to proceed, etc., with the estate.

Mr. McComiskey: Yes, he does, and this is one of the problems that I would point out arises out of example 1. Suppose that in example 1 the Ombudsman got involved and said, "You should pay the funeral director." I could then be faced with Mr. Price coming along, applying to the courts and saying, "You should not have paid the funeral director, because you had no contract with him." I could then be caught between two stones.

Mr. Shymko: Yes, but what I perceive is that you treat the Ombudsman's office in the same way you treat Gordon Price. You say: "Look, do not come to me. I am not going to give you this information. Go to the courts." In the case of case 11, you even told the investigator the guy is unfit to practise, is unfit to be an investigator and it should be reported to the law society.

Mr. McComiskey: I felt very strongly. This is the one I mentioned before where a man died in Vancouver, British Columbia, with virtually no money. We were acting as agents for the public trustee in British Columbia. We actually recovered \$258 from the sale of his property in Ontario.

Mr. Shymko: You clarified. Basically you said: "Look, you are answerable to the surrogate court. That is where you, the Ombudsman, should go, or the complainant. That is not your jurisdiction." Basically, you would tell Gordon Price the same thing, would you not?

Mr. McComiskey: Yes.

Mr. Shymko: That is the problem I have because I certainly do not see Gordon Price as being equated with the Ombudsman. The other thing is service. How many requests, letters or correspondence do you get in French, for example, last year? Did you get a lot of requests in French?

Mr. McComiskey: No, we did not.

Mr. Shymko: How many in the last five years?

Mr. McComiskey: We get roughly 18 telephone calls a year.

Mr. Shymko: In correspondence, how many? Was case 12 the only case in the last five years?

Mr. McComiskey: No, I would not say in the last five years. We now have a bilingual lawyer, a bilingual secretary, a bilingual switchboard operator and a bilingual estates officer; so we would not have the same problem.

Mr. Shymko: You do not see all of these requests as coming from fanatical separatists?

Mr. McComiskey: No. The unfortunate part was that this man did speak English. I talked to him on the telephone. He did speak English. I recognize the government policy and I realize that what happened was wrong in this case. This is what my estates officer did. At that time we were having to send out for translation, and this man would write a 10-page letter that would cost us \$107 to have translated. By the time we got the translation back and the answer translated, there would be two more letters in. My estates officer wrote to the man and said, "It would be helpful and speed up the process if you would write in English," which was contrary to government policy and I think was wrong.

Mr. Shymko: At present, you state you understand the direction of government policy and you would not be taking the same position today as you did in the past.

Mr. McComiskey: No. We now have bilingual staff. You asked me how many letters. I think in a year we might get 60 letters.

Mr. Shymko: Do you still deduct the cost of translating a letter from the estate or have you stopped that practice?

Mr. McComiskey: That was the first time it had arisen. We really wondered what to do with it, but now our own staff do it, so there is not the same problem.

Mr. Hayes: My question may be partially answered due to Mr. Philip's questioning about legal opinions. In Mrs. Meslin's letter to Mr. Hill, she stated they have obtained legal opinions from both in-house counsel and outside counsel to the effect that there is no legal impediment to the Ombudsman's access to the public trustee's files. Have you received recent legal opinion contrary to what Mrs. Meslin is saying?

Mr. McComiskey: Yes. I am not sure of the date. I have a legal staff of my own and I have reviewed the problem six or seven times with legal staff over the years. When this problem came up again, it was not me who asked for it. I had stated my views to my ministry, and it was Mr. Grant who asked for an opinion from somebody in the civil litigation section of the ministry. It was about a year ago. I am not sure of the date. Time goes by on me, but I think about a year ago.

Mr. Hayes: Have you attempted to get an outside legal opinion or counsel outside of your ministry?

Mr. McComiskey: I have not had one from outside of my ministry because I felt we had so much legal expertise in the Ministry of the Attorney General that it was not the type of thing that one would go outside for, although I see Dr. Hill--

Mr. Hennessy: If I heard you correctly, you said you had 54 complaints from 1979 to 1986.

Mr. McComiskey: Yes.

Mr. Hennessy: Can you break them down to what years you had them?

Mr. McComiskey: Yes. I had eight in 1979. I can go right back. In 1976, there were three; 1977, five; 1978, seven; 1979, eight; 1981, seven; 1982, seven; 1983, seven; 1984, six; 1985, seven; and this year to date, six. It has been fairly consistent.

Mr. Hennessy: That is fairly consistent. I asked the question because I do not think there is any ministry or any portion of the government which does not receive complaints. You are in the business of getting complaints. If you listen to some ministries, you get more complaints than others. The percentage seems to be very small.

I can agree with you in some aspects of it and I can see the Ombudsman's concern, but the idea is that you have the office of the Attorney General in charge of everything. If a decision is made, it should be made by that office. If they feel information should be given out, it is up to the legal profession. The Attorney General has to make the decision. It is not up to a group of people who are not lawyers and who are not legally qualified to know what they are doing. We could open up a real can of worms and then everybody would be pointing at the next guy and saying: "It was not me. I am not the government."

As far as I am concerned, I would just as soon leave it as it is.

Mr. Philip: I am confused.

Did you at any time write to Dr. Hill and say, "Dr. Hill, we have a jurisdictional problem and a problem with section 18 and we had better get an opinion on it"?

Mr. McComiskey: No, I did not, nor did he write to me on that basis.

Mr. Philip: When I go through the complaints by Dr. Hill, what I see are a whole bunch of ways of delaying any type of action. I hear you coming here and saying, "It is all because of section 18 and because of jurisdiction." My problem is that I find that very hard to believe. First, you received instructions from the Attorney General's officials to release files. Second, you had a number of delays to the Ombudsman that were not red-flagged by a section 18 or a jurisdictional argument and you eventually released them, notwithstanding section 18. I find your defence of your actions to lack some credibility. I would like to give you an opportunity to address that problem I have with your arguments.

Mr. McComiskey: I am sorry you feel that way. I do not think that is the case at all. As you can gather, there are some very technical problems involved in this. We answer the Ombudsman. I do not think there has ever been a case where we have delayed an answer to a complaint. I would say they are answered usually within two or three days, but not more than two weeks; so a full explanation is given very promptly.

Mr. Philip: Dr. Hill almost fell off his chair. Would you like to comment on that?

Dr. Hill: On cases and facts and statistics, Ms. Morrison, would you like to speak to the question of delay? Certainly, not in our experience.

Ms. Morrison: It may be true that we get an immediate response to our initial letter, notice of intention to investigate. That is what you were speaking to. Our cases, as we have documented them, show delays later in the

process, not in the process of immediate answer, which is either "We do not think this is jurisdictional," or, "This is our view of the matter." We are talking about delays later in the process. I agree that we usually get a very quick response to our notice of intention to investigate.

16:20

Dr. Hill: We had a situation one time in the middle of case when we started the process in October and we did not get a response until March. We have situations like that. After we get into the case, the delays seem interminable.

Mr. McComiskey: I just do not think that happens, sir.

Dr. Hill: We have the documentation on it.

Mr. McComiskey: I think I can produce the files, anyone of them here today. The Ombudsman sends us a copy of the complaint. I then talk to the person on my staff who may be involved, get the information and report promptly back to the Ombudsman saying, "Here is our situation." As I say, we have been facing an involving process. At first there was no question about confidentiality; then there was a question about confidentiality. We then proceeded under what I might describe as the Morand agreement. We have changed again and the deputy minister has become involved. I have been keeping my own ministry informed. Then there were some arrangements being made, not by me directly, but by Mr. Grant with members of the staff of the Ombudsman, which go outside what I was doing.

We raise our problems about jurisdiction early, and then sometimes, after our agreement with Mr. Morand, an investigator will come over and say, "I have come for the file." I would say, "No, I will not give you the file, but here are copies of the documents." In view of what Mr. Campbell said later, I have been producing the files, although I have some concern about that.

Mr. Philip: There may or may not be a jurisdictional problem. You may or may not have a jurisdictional argument. You may or may not have a section 18 argument, and I am not prepared to debate that today. That may well be something the committee has to look at and make some recommendations on. I am not questioning whether or not you have an argument on that.

I am questioning whether or not the argument has been produced in order to come before this committee to deal with some other problems that may have existed between your office and the Ombudsman's office. You have answered that, and I appreciate your answer, but it remains a question--

Mr. McComiskey: I am glad this is brought before the committee. I welcome the opportunity to come and describe the problems that exist.

Mr. Chairman: Mr. McLean, followed by Mr. Miller.

Mr. Philip: I think Dr. Hill wanted to respond to that.

Dr. Hill: No. I wanted to say something else about confidentiality, which I will say later.

Mr. McLean: Listening to both sides of this situation, I think it is clear what has developed over a period of years. I can certainly see from the

public trustee's point of view the problem he has when he is working under the jurisdiction of the Attorney General's office. I think the committee should look at ways of getting the Attorney General involved, of finding out from him clearly the jurisdiction the public trustee has and what jurisdiction the Ombudsman has under section 18.

It has been a good airing of the facts and I can certainly see both sides, but if there are any changes they should be made on a recommendation of the Legislature on the advice of the Attorney General.

Mr. Philip: We are going to need some background research and papers before we can deal with it. I do not think this is something we are going to resolve today.

Mr. McLean: No.

Mr. G. I. Miller: I have a question for Mr. McComiskey. Do you get many complaints from members of the Legislature?

Mr. McComiskey: No. I think I have had letters from two of the members here. They are inquiries more than complaints, I would say. From Mr. McNeil and Mr. Hennessy, I have had letters making inquiries about certain things that have happened. I have an inquiry this week from Mr. Haggerty. I would say there may be two or three inquiries per year. I would not classify them as complaints.

In Mr. Haggerty's case, it could turn into a complaint and may justifiably be so, but Mr. Haggerty has been corresponding with me about a particular estate and there were a lot of problems in it.

A few people write to the Attorney General and, again, I would say there may be two or three per year and I get inquiries that way; but from members directly, I would say two to four per year.

Mr. G. I. Miller: In my 10 years here at the Legislature, I have had one or two, with people coming to me or the family coming in with a request. If I recall correctly, one was about putting a tombstone on the grave of a particular friend of theirs. I feel we have the right to represent our constituents and the Ombudsman is in exactly the same position.

My interpretation has always been that if we cannot resolve a problem on behalf of our people, the Ombudsman should have that right, and confidentiality is one of the statutes that he works under.

After working with two ombudsmen on what may have been a bit of an ad hoc basis and having been able to come to an agreement with them, I cannot see why we should be having problems with the current Ombudsman in trying to carry out some requests on behalf of a family. Families have rights.

Mr. McComiskey: Are you referring to a specific case in which you were involved, sir?

Mr. G. I. Miller: Yes, it was a friend of a family. The man had no family all his life and they wanted to make sure there was a tombstone, a marker put on. We had to go to quite a bit of detail in order to get that achieved.

In my opinion, the request was legitimate. I knew the family and the

individual, but it was not easy to achieve that. I had to deal with your office. That is going back a few years now.

Dr. Hill, would you like to respond to that?

Dr. Hill: You were mentioning confidentiality. What could be more confidential than the records and the information coming out of psychiatric hospitals with their confidentiality provisions, or with the Ontario Provincial Police? We have never had difficulty with either of those cases in terms of confidentiality.

Mr. Bell: Mr. McComiskey, before I ask Dr. Hill and his staff a couple of questions, is there anything else you have to offer the committee that you think might assist it in addressing the issues that are apparently between you and the Ombudsman?

Mr. McComiskey: I do not think so, Mr. Bell. The problem has been explained to you and I do not think there is anything more.

Mr. Bell: Dr. Hill, I hear what you say about confidentiality, but--

Mr. McComiskey: Excuse me; may I just say one thing?

Mr. Bell: Yes.

Mr. McComiskey: I have a question. I guess it was Mr. Philip who asked me if I had gone to the court. I am not positive, but I think the only court I can go to is the surrogate court by way of passing of accounts.

The Ombudsman has a clear right under his act to go to the Divisional Court. I am not sure I have the same right to go to that court; so that may be another problem.

Mr. Bell: You may wish to give this answer, Dr. Hill, to either Michael Zacks or Gail Morrison. I get the sense that even if the jurisdictional question were resolved, you would still be in the middle of the woods because of the confidentiality issue.

It is kind of meaningless to have jurisdiction over a complaint involving the public trustee if you do not have access to any information. I heard what Gail Morrison said about it. How do you reconcile section 18 of the Public Trustee Act with your subsection 20(3) and absent any "consent in writing" by subsection 20(4)? In my view, that does not solve the problem. I understand that is why Dr. Hill took his position with respect to the agreement. How do you reconcile the two?

16:30

Mr. Zacks: We have two arguments, but they are in the alternative. The first is that section 18 does not apply at all to an Ombudsman investigation. The basis for that conclusion is that an Ombudsman investigation is in connection with the administration of the Public Trustee Act. Accordingly, the public trustee is not bound by his secrecy provision in dealing with the Ombudsman, and as such, the confidentiality provisions of the Ombudsman Act preventing us from access do not apply. Subsection 20(3) does not apply because providing information to the Ombudsman would not be a breach of section 18 of the Public Trustee Act.

Mr. Bell: Why?

Mr. Zacks: Because, as I said, an Ombudsman investigation is in connection with the administration of the Public Trustee Act. There is a provision in section 18 that permits disclosure as may be required in connection with the administration of the Public Trustee Act.

Mr. Bell: But you have to read that phrase in context with what immediately precedes it, "other than to a person legally entitled thereto or to his legal counsel...."

Mr. Zacks: It continues "...except as may be required in connection with the administration of this act."

Mr. Bell: You say it is an exception of the exception.

Mr. Zacks: Yes. The basis of that argument arose in a decision that is unrecorded in either 1979 or 1980. We were facing exactly the same problem in the Re-Mor investigation. There was a lawsuit going on at the same time, and our problems in getting access to government files at that time concerned a very similar section. The litigants went to court on the same issue. It was held by a master that the lawsuit, which was based on the negligence of the regulatory official, was in connection with the administration of that act. Accordingly, discovery was available and the regulatory official could not rely on that provision to prevent disclosure of information in the discovery process. The same rationale was applied to us by the Attorney General in giving us access to the same information.

Mr. Bell: Has your office shared that with Mr. McComiskey?

Mr. Zacks: Many times.

Mr. Bell: He does not believe it is relevant.

Mr. Zacks: I am not sure why, but the position of the Attorney General is that rationale does not apply to this case, and here we are today.

Mr. Bell: Therefore, it is not only Mr. McComiskey who has that view; it is shared by other people in the Ministry of the Attorney General who support him.

Mr. Zacks: That is my recollection. That is the position they have taken. If you are interested in the alternative, I can give you that as well.

Mr. Bell: No. I think you have done a good job with the first one.

Mr. Zacks: That is the basic thrust of it. The Ombudsman Act prevents our getting access where there is a secrecy provision only if it would result in a breach of a secrecy provision. We feel there is no such breach. Accordingly, we are entitled to access.

Mr. Bell: Dr. Hill, you have heard Mr. McComiskey's comments this afternoon. Do you or any member of your staff have any response to anything raised?

Dr. Hill: Do you want to say a couple of things, Gail? I have a very brief response.

Ms. Morrison: There are a couple of things I would like to comment on. One is that we agree there have been a small number of complaints. We did not come here to argue about the number of complaints against the public

trustee. We did not come to argue about the merits of those complaints. We did not come to talk, I do not think, about the jurisdictional problems.

Dr. Hill's statement in the annual report concerned nonco-operation. Because it has been raised a couple of times during the afternoon, I would like to assert on behalf of my staff members that there have been occasions when they have felt they have been treated discourteously. While it has been disputed and we are not going to hear testimony under oath or anything such as that about discourtesy, I think it is only fair that it not be overlooked.

Our investigators have work to do when they go to an office such as the public trustee's. If there is a jurisdictional problem, it should go to the courts or should be resolved some other way. It cannot be resolved by having our staff treated in a discourteous manner. I did not want the rest of the discussion on the technicalities to overlook the problem of nonco-operation, which is what we originally raised.

Mr. Bell: Does anybody else have anything?

Dr. Hill: I have a closing comment for a few minutes, some of it amplifying what Gail Morrison, our director of investigations, has said.

The merits of the various complaints against the public trustee were not the intended subject of today's discussion. I brought my concerns about our relationship with the public trustee to your attention and hoped we could resolve the difficulties without recourse to the courts.

Many of the comments you have heard related to jurisdictional or legal questions of disclosure, which cannot be resolved here. If the questions were at the bottom of our difficulties with the public trustee, the courts would be an appropriate forum. However, the public trustee has not formally challenged my jurisdiction; rather, he has submitted to my jurisdiction, although grudgingly. That is why I made my concerns public.

Many of the complaints to me are not proper subjects of court action. In all areas of my work, there are complaints that could be settled in court, but that does not prevent my investigation. It is particularly worrisome if the poor, the incompetent, the old or the infirm should be sent to court and deprived of my help, especially since no formal legal decision has ever been obtained that would deprive them of my assistance. That is all I have to say.

Mr. Chairman: Mr. Miller, do you have a question?

Mr. G. I. Miller: After hearing all the evidence this afternoon, I think it is a pretty minor thing. The two offices could sit down together and come up with a reasonable solution. Again, using myself as an MPP as an example, I am in the middle of many disputes, and I put the Ombudsman in the same position. We should be in the middle to try to resolve them and to keep them out of court, with its costs, with all due respect to Mr. Bell; I would like to see him get his fee. We need the court's protection, but I think we should use some common sense and try to resolve some of these things as amicably as we can, as in the example I used in my own case of a few years ago.

Mr. Bell: Dr. Hill, you may want to respond. Mr. Miller is asking each of you: "After an airing of it here today, is there anything that could be accomplished by a good, forthright sitdown between the two of you, perhaps without any support staff, to see whether you can thrash out the difficulties? If there is, pursue it. If there is not, you know what you have to do."

Dr. Hill: I have to be most candid. I think conciliation and mediation have been the cornerstone of my operation as Ombudsman. That has been reflected by the fact that I have not brought one recommendation-denied case to the standing committee this year. I feel very strongly that I have tried in the best ways I could find to conciliate and mediate this thing. I am not positive that we may not have to go to a higher authority to deal with the matter. I am not sanguine about it.

Mr. Shymko: Considering that Reagan and Gorbachev spent some three hours in Geneva resolving very important world issues, I was intrigued why the public trustee had an opportunity of only five minutes. I am sure it is not because the Ombudsman would not want to spend more than two hours with the public trustee, but I think the spirit of the suggestion both of Mr. Miller and all of us here is that to sit down for more than five minutes would be a good step forward, and perhaps we could proceed further. We would certainly suggest that many of these things could be resolved by a meeting between the two very important public individuals.

Mr. McLean: You have a jurisdictional problem. They both think they are right.

Mr. Bell: I do not think there is anything--

Mr. Hayes: I cannot agree with the last couple of speakers on this issue, because sitting here it is quite obvious that one party is saying one thing and the other party is saying another. From the length of time we have been sitting here, it does not seem to me that one side or the other is going to weaken. I do not think that is the answer.

It would be nice if we could solve all our problems that way, but it seems quite obvious to me that they are not, unless Mr. McComiskey wants to state that the investigators from the Office of the Ombudsman are going to be treated in a different manner or able to have more access.

It looks like we will have to look at our legal opinion in this issue, but as for saying we have to get a legal opinion from the Attorney General's office, it seems to me there is a kind of conflict there, because the trustee is part of that ministry; so I do not think that is going to answer our question either.

Mr. Bell: Mr. Chairman, I think it is wrung out. You have to deliberate at some time between now and when you report this matter to give direction to both Dr. Hill and Mr. McComiskey and his office as to ways and means of breaking the logjam. If anything has been agreed on today, it is that there is a logjam that needs to be broken. It is to be hoped that it can be broken by some means, the least expensive in the circumstances and not to the benefit of the members of the Law Society of Upper Canada, Mr. Miller; we will try.

Mr. Chairman: Is there any further discussion? If not, the committee will meet tomorrow morning at 10 o'clock.

Mr. Philip: Are we going to go in camera to deal with this issue now?

Mr. Chairman: Does the committee want to go in camera?

Interjection: No.

Mr. Chairman: We can discuss it first thing in the morning.

The committee adjourned at 4:42 p.m.



STANDING COMMITTEE ON THE OMBUDSMAN

ANNUAL REPORT, OMBUDSMAN, 1985-86

WEDNESDAY, SEPTEMBER 24, 1986

Morning Sitting

STANDING COMMITTEE ON THE OMBUDSMAN

CHAIRMAN: McNeil, R. K. (Elgin PC)

VICE-CHAIRMAN: Sheppard, H. N. (Northumberland PC)

Bossy, M. L. (Chatham-Kent L)

Hayes, P. (Essex North NDP)

Hennessey, M. (Fort William PC)

Mancini, R. (Essex South L)

McLean, A. K. (Simcoe East PC)

Morin, G. E., (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Philip, E. T. (Etobicoke NDP)

Shymko, Y. R. (High Park-Swansea PC)

Substitutions:

Knight, D. S. (Halton-Burlington L) for Mr. Morin

Miller, G. I. (Haldimand-Norfolk L) for Mr. Newman

Reycraft, D. R. (Middlesex L) for Mr. Bossy

Smith, D. W. (Lambton L) for Mr. Mancini

Clerk: Decker, T.

Clerk pro tem: Deller, D.

Staff:

Bell, J., Legal Counsel; with Shibley, Righton and McCutcheon

Evans, C. A., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Ombudsman:

Meslin, E., Executive Director

Mills, A., Controller

Morrison, G., Director of Investigations

Hill, Dr. D. G., Ombudsman of Ontario

Zacks, M., General Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, September 24, 1986

The committee met at 10:14 a.m. in room 230.

ANNUAL REPORT, OMBUDSMAN, 1985-86
(continued)

Mr. Chairman: Now that our counsel has arrived, we can start.

Mr. Bell: Those of you who attended the two meetings in the north and the discussions with Dr. Hill and his staff respecting certain aspects of his report will know that there were certain requests made for information respecting certain matters of the office and Dr. Hill's undertaking to provide the information.

Dr. Hill and Mrs. Meslin, rather than my asking you on a seriatim basis to give us the information--I know you and I have exchanged lists of things--why do I not just throw it to you and you provide the information on an itemized basis, if you can. I would like to get all the nonstatistical stuff out of the way first, and then we will finish off with that.

Mrs. Meslin: We have your memo that deals with all the questions and we are prepared to respond to all of them without any difficulty. Do you want to wait for Dr. Hill's comments, which deal with general statistics and the whole works?

Mr. Bell: Can we get the nonstatistical? Is it possible to segregate that?

Mrs. Meslin: Yes.

Mr. Bell: We will finish with the statistics before we get to the other subjects.

Members of the committee, you will find in tab E of your material two pages of statistical information. There is more to be added to it, including Dr. Hill's response, which he will make shortly.

With that introduction, Mrs. Meslin, can you take the committee through the matters that you have ready?

Mrs. Meslin: I am going to have the assistance of a number of the staff in some of them, and the others I will handle.

The clerk is handing out the list. Number 2, page 37-3: "Provide a list of the ethnocultural and other groups where Dr. Hill has spoken or staff members have spoken." Just so you have a fair idea, Gail will respond to the first one.

Ms. Morrison: This question was raised by Mr. Philip at the hearings, and I responded in a letter to him about this particular complaint. I did not bring the letter with me this morning, but the sense of it was that the complaint we investigated--

Mr. Bell: Excuse me, Gail. Perhaps you can just give us a brief description of the matter. Committee members do not have that memorandum.

Ms. Morrison: The matter had to do with a complaint we had investigated concerning a disabled person who lived in the second storey of a building which was considered to be a fire hazard. I reviewed that complaint in our office. It turned out that it was a private building she lived in, and she was trying to get into Ontario Housing. She eventually moved to another community and did not require housing in that community.

Our investigation included a review of all available public housing in the community and would have resulted in her being housed had she wished to stay in the community. The building itself, being in the private sector, was not within our jurisdiction.

Mr. Bell: I think the next one was to provide certain information about where the school kits that your office has assembled have been sent and give us some description as to their use.

Mrs. Meslin: The school kits were put together at the request of the Ontario Secondary School Business Teachers' Association. We attended at their annual meeting and distributed kits to the 52 secondary school business teachers who attended. We gave them the kits. The kits contained a cross-section of all of our literature material, annual reports, etc. We did not speak there, but we did indicate to them that if they were interested in follow-ups, we would be pleased to visit the schools, etc.

10:20

At this point, we are also, as I think I did indicate in the Sault, working on a curriculum to be put into the schools, if we get authority to do it. First, we are working on the curriculum to see whether we have something viable in the law courses in secondary schools in terms of teaching what the Ombudsman does.

Mr. Bell: Have you had any feedback from that group yet?

Mrs. Meslin: Yes. We have had excellent feedback. As a matter of fact, we have had a number of requests from teachers who have received it to send it to other teachers; so it did have some very positive feedback.

Mr. Bell: The next one--

Mrs. Meslin: Do you want me to read them or do you want to go through them?

Mr. Bell: The next one has to do with the phasing down of the regional offices and what the economies--

Mrs. Meslin: This was in relation to the statement we made that we had reduced district office staffs from three people to two people. I think the committee wanted a little more detail. Allan Mills will supply that.

Mr. Mills: Savings realized vary from office to office, and on the salary of the third person, who is either relocated or not replaced, but I think it is fair to say that an average figure is \$25,000. It varies, though, from one office to another.

Mr. Bell: What is that in the aggregate?

Mr. Mills: We have done that in the case of three offices; so I think the savings were \$75,000 in salaries and benefits.

Mr. Bell: There was interest expressed--I believe this was by Mr. Philip when he raised the matter in Sioux Lookout--on what that is on a comparative basis with your current approach for offices outside of Toronto.

Mrs. Meslin: Do you mean the new stringer field officers?

Mr. Bell: Yes. Is there a way to compare them?

Mr. Mills: Not really. First, these people are part-time. Second, because they are part-time, we do not pay them the full range of employee benefits that we would pay a full-time employee; so it is really not too valid to compare them.

Mr. Bell: Is it accurate to say that the approximately \$75,000 in savings has been applied elsewhere throughout the offices?

Mr. Mills: I think that is fair.

Mrs. Meslin: It was the assistance we needed financially to launch the field officer program because we did not have any money specifically earmarked for it. That is one of the areas from which we hived off money.

Mr. Bell: We have already dealt with the next matter, which was specific examples of the public trustee.

The next item has to do with the matters that were brought to your attention in all the communities visited during the northern trip. There was a promise to keep this committee informed of what Dr. Hill and his office were doing in respect of those matters. You probably cannot say an awful lot about that right now, but perhaps you can tell us what has been done to date and what mechanics we can set up by way of a continuous information service.

Mrs. Meslin: With the help of everyone's notes on the various complaints we had, we have compiled a listing of all the complaints in the two areas and we have subdivided that into complaints that are obviously jurisdictional complaints. Those were handed over to Ms. Morrison, and she can give you a brief report on what has happened to them.

Ms. Morrison: The complaints received from Port Severn, in particular, yielded a number of matters that appeared to be jurisdictional, and we are making preliminary inquiries on them. These include complaints about the hiring of residents of Port Severn to fight forest fires, the hiring of residents for tree planting and the low flying over Partridge Island and the effect on the goose population there.

One of our investigators is handling all these complaints and has contacted the ministry in a preliminary way to obtain information that is necessary to see whether we will institute a full-scale investigation or whether the matters can be resolved without going through the formal process.

Mrs. Meslin: The second part of that is those questions that were raised that may be jurisdictional, or that are not but that we feel we want to

look into a little more deeply. Harvey Savage, our director of regional services, has developed a strategy paper for Dr. Hill and me to discuss in terms of how we are going to approach that. Once we decide what direction we are going with that, we will report back to the committee on it.

Dr. Hill: As an addendum to that, one of the things I mentioned when we were on that trip was that it would be awfully necessary for us to know exactly what Roberta Jamieson, the Indian Commissioner of Ontario with the Ministry of the Attorney General, is doing; to know exactly what the native council on justice is doing; to know what the Ontario Human Rights Commission's initiatives are and those of all those other governmental and other organizations that are working in the field. Our strategy generally is to sit down with those groups and find out what they are doing before we jump off on a plan on our own. That is one of the things Harvey has developed in the strategy paper for us.

Mr. Bell: I think it is accurate to say, and it probably should be said, that the message conveyed, perhaps implicitly, by the communities with which we met and visited was: "Here we go again. Here is another group coming up. 'Tell me about your problems.' Then they go back and nothing will happen."

I do not mean to say this is going to happen in your case; we know it is not. But the point is that the committee feels very much part of the process because it was there with you when those concerns were expressed. While it is perhaps unique and unprecedented, it is nevertheless probably appropriate that you can get all the credit for the solutions, but the committee should remain part of that process, at least to maintain continuity, if you will, as for rapport with that community. Not many committees of the Legislature ever visit that far north into those regions, and the committee's wish is that whatever relationships and rapiers have been established be maintained. I know others will have comments for you as well in that regard.

Mr. Philip: I suggest that the chairman should send the leadership of each of the communities the excellent summary of what we heard that was done by Catherine Evans, along with the Hansards, with a letter stating that we intend to follow this matter up with the Ombudsman at future meetings of the committee.

The most important thing is, first, that they understand we did listen to them and we understood what some of their concerns were. Also, if they wish to write to the committee and say, "There are certain other concerns," or, "You misinterpreted what we were saying on a particular matter," they have that opportunity to write to the chairman and express that as well. If we do not, we just become, as John Bell has said, another trip up there with very little happening. I do not think I need to make a motion on this, but you understand the thrust of what I am asking you to do.

Mr. Chairman: That is a good idea.

Mr. Hennessy: On the same topic, we went a long way. It was not in the best of conditions, but the idea is that we met with the people, and they expressed some concerns. I am sure members of the committee feel it would be a wasted trip if we went up there and did not look into their problems.

I suggest to this committee that somewhere along the way, within the next two or three meetings, we look into the other aspects and perhaps pass an interim report with regard to some of the problems they are experiencing and what has been done to try to alleviate some of the problems.

10:30

Mr. Bell: I know we will be back into some of the northern ridings later, but let us finish this shopping list. Into the next transcript, the next item was probably more of an undertaking still outstanding to make available to the committee the report on the special investigation of the Timmins Housing Authority as and when it is completed. Where is that now?

Mr. Shymko: On a point of order, Mr. Chairman: I see counsel is following some kind of agenda or order of subjects to be discussed here from a memorandum he referred to. Can we have copies of that?

Mr. Bell: Yes. I am going to give them to you. I apologize for not doing it. I had it prepared by my office in terms of the transcript so I would make sure we did not miss any of it.

Mr. Philip: Mr. Chairman, is it your pleasure that as each item is dealt with, the members who may have some comments comment on the item, or do you wish Mr. Bell to go through his list and then we can come back later?

Mr. Chairman: I think we can deal with each one as it arises.

Mr. Philip: I have one on the first item. I was going to deal with it under estimates because, while the problem is solved, in quotes, by the woman moving to another community, it raises some interesting policy questions regarding Ontario Housing Corp. I do not know whether you want me to deal with it during estimates when I will be dealing with some other housing issues. I will deal with it during estimates. It took me five minutes to find the letter among the numerous letters I get from the Ombudsman.

Mr. Shymko: I went through the report prepared by Catherine Evans on the trip to northern Ontario. Some of the matters are very important. They are crucial. Others verge on the area of some serious crises. I know these matters normally are raised and probably will be raised by the various critics in the estimates of various ministries dealing with native affairs.

This is the second trip this committee has made to northern Ontario. Those of us who went on the initial trip recall that we discussed what to do with the information we obtained, whether to file an official report to the various ministries outlining some of the concerns raised with us. Some of these things were sent to the Office of the Ombudsman because he did not join us on that first trip.

Can we have some consensus as to what will be done with the information gathered from this trip to northern Ontario? Will we leave it in limbo as we did initially with the first trip? I think Mr. Philip can back me up that we did not follow it up as diligently as a normal committee would do. Do we file an official report in the House on this trip? What is the process?

Mr. Philip: I suggested a possible process. One is that the minutes of our Hansard plus the summary of the issues be sent to the native groups and to the various officials in the municipalities we visited, along with a letter from the chairman saying that the Ombudsman is looking into those matters, including letters to the appropriate ministries where it is nonjurisdictional, and that the committee will be following up on it.

I do not know what more is needed than that. The Ombudsman obviously has not had an opportunity in the short period of time to follow up on all of these, but as long as the chairman and the clerk have note of it, the next time we meet we will have an opportunity to have the Ombudsman report back to us. I do not see the need for a special report on the northern trip, if that is what you are asking for, as long as it is part of our general record.

Mr. Shymko: To follow up on the second part of Mr. Philip's proposal, namely, to inform the respective ministries of some of these concerns, just sending the information to the various bands, etc., is not enough. I am glad you mentioned that we should pursue this with the ministries, because I see the questions on the constitution--I see the ministries of Justice, Health, Housing, Education and Natural Resources mentioned constantly. Will we do this formally as a committee report? Is that the suggestion?

Mr. Philip: I guess the follow-up to that will be that once Dr. Hill reports back to us, it will take up a part of our annual report for that year. I suggest that is easier than somehow turning out a special report on the northern trip. It is hard enough to get our reports debated in the House as it is, with scheduling, without turning out a special report. It could be incorporated as part of the next report.

Mr. Shymko: Could we not just take out the relevant areas dealing with education and send a letter signed by the chairman on behalf of--

Mr. Philip: The Ombudsman is doing that.

Mr. Shymko: Is it the Ombudsman who should be doing that, or should the committee be doing that?

Dr. Hill: Pardon me, Mr. Shymko, we made a number of commitments to Trout Lake and to the other people, saying to them that we would meet with the appropriate officials to find out what plans of action will be drawn up in concert with us to assist those nonjurisdictional areas--all those other things that are not within our jurisdiction but that we think an Ombudsman should be concerned about. Mr. Savage now is preparing that, and we are setting and scheduling those meetings fairly soon. We will be reporting back to you on that.

On the other hand, some of the members said that they would write on their own or that the standing committee would write its counterparts in the federal government about some of these issues, which are outside my purview, but that commitment was also made to the native people that we would write to the members of Parliament and discuss these matters with them.

Mr. Bell: I think Mr. Philip was correct in terms of the process that was started during the trip. It is not necessary for a special report. However, Mr. Shymko, you will recall that when the first half of the northern excursion was taken--with you among others--the committee made certain comments and observations in its report, which it said it would expand upon and develop after it had completed the western half of the trip, which is now completed.

It is important that the two issues in those comments and observations be addressed in your next report. Those issues are: the need for an ongoing and continuous presence of the Ombudsman in those northern communities--and I think the evidence is clear that has been very well addressed--and the manner

in which the Ombudsman deals with complaints emanating from those northern regions; i.e., whether everything has to be done through Toronto.

In my opinion, those need to be addressed in your next report, but not in a special way. Catherine's very thorough summary can be incorporated in a substantial way into the next report just to tell everybody who is interested in reading it what was done--not a special one but incorporated as part of the next one.

Mr. G.-I. Miller: Dr. Hill, after you have made the trip to the north, how soon do you deal with the ministries involved? Have you made contact at this point?

Dr. Hill: We have assigned an investigator. Is that not correct? The first thing to do to gain and keep the confidence of the native people is to investigate promptly those jurisdictional matters that come right within our purview. If you do those well, then you gain a measure of confidence from the people. We are in the process of doing that right now. The first thing is to handle the complaints that come within our area, and handle them well. I have instructed my staff to do that immediately, and to my knowledge they are.

10:40

Mr.-G. I. Miller: In your past experience, have the ministries been responding well to the requests?

Dr. Hill: As far as I am concerned, whenever we have had a complaint or a matter involving native people, the ministries have responded to me correctly and well.

Mr. G. I. Miller: I think again it is important to deal with it as quickly as possible and be efficient. I am sure the ministries will co-operate.

Dr. Hill: They will.

Mr. Shymko: Just to point this out, I recall a concern we had about a correctional institution in northern Ontario that resulted in a very upsetting communication from the administrators of the correctional institution to the Minister of Correctional Service that this committee, in some of the comments it was making, was infringing upon, upsetting and disturbing the entire system. This is something I recall happened in the past. Perhaps the Ombudsman dealing directly with ministries, rather than individual members of the committee or the committee doing so, is the right approach.

I do not know whether Mr. Philip recalls this as well, but I recall that in one ministry the administrators were somehow upset that the committee had disturbed the functioning of the institution by directly questioning inmates and other things. Therefore, I congratulate the Ombudsman on the speed with which he is communicating with the ministries involved.

Dr. Hill: Perhaps that other matter was before my time.

Mr. Shymko: Yes. It was before your time.

Mr. Bell: Gail or Eleanor, you were going to tell us what the status of the Timmins Housing Authority report is.

Ms. Morrison: The Timmins Housing Authority investigation has been almost completed. In fact, the investigator is in Timmins today doing the

final fall review and has a draft report, which should be completed by the middle of October and which we hope should be available in final form by the end of October.

Mr. Philip: Do I take it we will schedule that for discussion during our Christmas recess as part of our agenda?

Mr. Chairman: It will be ready.

Mr. Philip: Make a note of that. Is it okay with the Ombudsman to discuss that during the Christmas recess?

Dr. Hill: As long as it is not on Christmas day.

Mr. Philip: During the January session.

Mr. Bell: The next item concerns psychotraumatic disability entitlement. You were going to advise the committee of the progress of the investigation in that regard. What is the status?

Mrs. Meslin: That is well under way. The senior investigator who is doing it has already got about two thirds of her report drafted. I hope that within the next month we will have a final report from her on it.

Mr. Bell: What is the timing on its tabling or issuance?

Mrs. Meslin: To tell you the truth, we have to take a look at it to see whether it is as complete as Dr. Hill wants it to be. We have set frameworks all the way along with the investigator, but I would hope we might be able to do that in January too.

Mr. Bell: The next item has to do with an investigation concerning a particular nursing home. I think you advised us in August that it was expected the report would be issued this month.

Mrs. Meslin: The report was issued on August 26, and we expect the response from the ministry this week.

Mr. Bell: Assuming the response is neither adequate nor appropriate, is it Dr. Hill's intention that it be sent to the Premier (Mr. Peterson) and afterwards issued as a special report?

Mrs. Meslin: Yes. By the way, I would like to ask whether the question further down the page, 178/3, is in relation to the same case.

Mr. Bell: I have not caught my breath yet. Do not ask me difficult questions such as that.

Mrs. Meslin: I could not make it out. I think it is.

Mr. Bell: Maybe not. I believe it is, and unless we advise you otherwise, you should presume that it is.

Mrs. Meslin: Okay.

Mr. Bell: As for the Argosy matter, you advised us in August that it was an expectation that the final report would be ready by October. Is that still your timing?

Mrs. Meslin: Yes. I hope so.

Mr. Bell: Is that something the committee should presume to place on its January agenda?

Mrs. Meslin: It may.

Dr. Hill: If it is not resolved, certainly, Mr. Bell.

Mrs. Meslin: It would then go by way of special report also.

Mr. Bell: All right. Next is an item with respect to an investigation you have under way on electronic monitoring in the work place.

Mr. Philip: Before we leave that, Mr. Bell, we would have to make a decision--or will it be left to the subcommittee to decide?--regarding the hiring of special counsel for the Argosy hearings or Argosy debate if that is being handled. Have you nothing to report? You have had all of six or seven hours to look at the problem.

Mr. Bell: I have not. In the event that the Argosy report is tabled as a subsection 22(3) recommendation-denied case and then referred to this committee for appropriate consideration, it is with great irony, because of a conflict I am in involving my firm, that it will be necessary for the committee to obtain special legal counsel to assist it during the hearings in that matter.

Mr. Shymko: On a point of order, Mr. Chairman: This matter was raised in camera yesterday. Is it the intention of Mr. Philip that we discuss this publicly?

Mr. Philip: Yes. The only way we can deal with it, because the committee probably will not be sitting until the next recess, will be to give somebody the authority to move ahead if it is necessary, if the Argosy matter is not resolved, and hire counsel. What I am proposing is that in the event there is a special report on Argosy--this assumes, of course, there is not a resolution to the problem--the subcommittee of this committee be empowered to select a counsel to assist the committee with that matter.

Mr. Shymko: Once again, we had an in camera meeting yesterday where some matters were discussed, and I want to know at what point we want to delve into this area where the counsel is confident or comfortable with the fact that we will be discussing this publicly and making decisions and that this is what he wants done.

Mr. Philip: There is nothing secret about it. We know there is a report going on; it has just been said on the public record by Dr. Hill. So I do not know what you are talking about. I am just trying to get the thing resolved in as few minutes as possible without a whole lot of red herrings being brought into the thing.

Mr. Shymko: I just wonder what other points of our in camera discussions are going to be raised today. I am surprised that we are delving into this question of appointments and who will be making decisions, because I did not contemplate that this would be a public discussion in our meeting today.

Mr. Philip: It is on the agenda today. The agenda is public, for heaven's sake.

Mr. Shymko: The agenda is not to discuss the replacement of the counsel and who will be deciding. I am surprised this is being raised.

Mr. Bell: I hope not. Can I make a suggestion? There has been a discussion in camera, and nobody wants to make public all of those matters, except, first, there is an Argosy matter pending, which was discussed by the committee with Dr. Hill in August. Second, if it does go to this committee, there will be a need to have a special counsel for the very limited purpose, not to replace legal counsel but to act as a substitute for that very special purpose. If that event comes, we will know within the next six weeks. There is enough direction given by the committee in camera and through the subcommittee, if necessary, as a practical way to address the need if it arises. Otherwise, we are talking in the hypothetical today. I feel I have enough direction to make sure that your needs are well addressed for that purpose.

10:50

Mr. Philip: I wanted to make sure the subcommittee was not attacked by members of this committee for exercising authority which they did not feel it had the authority to exercise. If it is understood that the subcommittee will handle it, that is fine. It is on the record.

Mr. Shymko: We have a statement that the subcommittee will be handling it. I do not think we have ever reached a decision that the subcommittee should be handling the selection of a--

Mr. Philip: That is why I raised it before you so rudely interrupted me.

Mr. Shymko: I do not believe this was a point to be discussed today. That was not my impression of the in camera meeting of yesterday.

Mr. Philip: Fine. We will discuss it after January, and then it will go on for another six months.

Mr. Shymko: Are we going to decide now about this selection process--

Mr. Hennessy: How many chairmen have we got here?

Mr. Shymko: Is that what the point raised is all about?

Mr. Chairman: Apparently we are discussing it.

Mr. Shymko: Are we discussing it now? Is it the suggestion by Mr. Philip that the subcommittee decide on the various options of the individual to be selected?

Mr. Bell: The process is that, if necessary, I will make certain recommendations to the committee. I believe it will assist the committee if it is done through the subcommittee process to come and to recommend a selection to the committee as a whole. That is how I was chosen, rightly or wrongly, for the standing committee on public accounts--through the subcommittee process. It worked well there. They made an excellent choice of legal counsel. I believe it could probably work well. I am trying to get as many jobs in as I can.

Mr. Shymko: I just thought perhaps we should leave this to the next meeting of the full committee, when we will be discussing this very topic, and decide then whether the subcommittee--

Mr. Philip: The next meeting is in January.

Mr. Shymko: We can always call a meeting exclusively on this topic.

Mr. Hennessy: We discussed the matter in camera, and if we are going to bring it out in the open, then there is not much sense--now that it is in the open and it appears in the media, they will say, "It was in the public record, and that is why the reporter followed it up."

I am just saying if you have a subcommittee, it should not be up to one member. We should go back and decide in camera what we want to do with it. There is not much sense in me sitting here if everybody else is going to make the decisions. There is no bloody way you are going to do it; I can assure you of that.

The way it looks now, we have three chairmen and I do not know which one to answer to. I am a little bit peeved off with the attitude of some of the members. Let us act as a committee as a whole, not one or two guys trying to grab the ball and run for the touchdown.

Mr. Bell: Mrs. Meslin, you have a report pending on electronic monitoring in the work place. Let me just make a comment. I said yesterday that you had attempted to put the committee out of business with your last report. It looks as though you are going to put the committee back in business for this fiscal year. That is a very active agenda you have in terms of special reports. What is the status of electronic monitoring?

Mrs. Meslin: We now have 33 complaints that are being investigated in that area. It is an ongoing investigation at this point. That is about all I can say about it.

Mr. Bell: All right. We will put it on the agenda for the next time, perhaps the January agenda for a further report.

There was further discussion in the next item about another investigation as for complaints of certain property assessors regarding loss of pension benefits.

Mrs. Meslin: Gail Morrison will respond to that.

Mr. Bell: What is the status of that?

Ms. Morrison: That is also an ongoing investigation. We have a large number of complainants and we need to separate out the complaints that are strictly jurisdictional from those that are not. Because of the vague nature of the pension takeover question, we have had to separate this out into several large files, one of which will have complaints that look easier to deal with than the rest. The investigation is going on, and I would not expect a report on that for at least several months.

Mr. Bell: I do not want you to disclose any detail of this, but have you been able to confirm to date whether there has been a diminution of pension benefits?

Ms. Morrison: That is the very subject of the investigation.

Mr. Bell: As you know, other remedies may be available to people who have been placed, unilaterally or otherwise, in that situation--i.e., through the courts. I am just wondering whether some step has been taken to ensure that those complainants have been made aware, or at least directed to a location to be made aware, of what their rights are in that regard.

Ms. Morrison: I believe they have been.

Mr. Bell: Okay. The next item was discussion of a specific pending investigation regarding the death of a developmentally handicapped resident. What is the status of that?

Mrs. Meslin: It is well into the investigation.

Mr. Bell: That is another one for the January agenda.

Mrs. Meslin: It may not be. It may be going on past that time.

Mr. Bell: Okay. The next item has to do with the provision to the committee of an Ontario Housing Corp. board policy respecting a June 13, 1986, meeting.

Ms. Morrison: Yes. I have to apologize. I did not bring copies of that with me this morning, but I have someone at my office who is collecting them and bringing them down.

Mr. Bell: Okay. You can distribute them to the committee then.

Mr. Philip: I have a copy here if the clerk wants it.

Mr. Bell: We could have them before two o'clock. It may be a matter that some members would wish to raise during the estimates portion of the agenda.

There was a request by a member of you, Dr. Hill, to determine whether the issue of sponsored immigrants eligible for accommodation includes people who are currently on work permits pending landed immigrant status.

Ms. Morrison: I have inquired into that, and it does not include persons who are landed immigrants. It does include people who are on a minister's permit or who have sponsored immigrant status.

Mr. Bell: All right. We have already dealt with the next item. That is the crossover of the nursing home report.

Mrs. Meslin: The last items will be responded to in Dr. Hill's comments.

Mr. Bell: That completes my list, unless members of the committee have any questions on any nonstatistical matters.

Mr. Hayes: I would like to make a motion, Mr. Chairman. It deals with the issue of Argosy complaints. I move that the subcommittee go ahead and meet, make a decision on hiring a special counsel for that special issue and then report back to the committee.

Mr. Chairman: You have heard the motion.

Mr. McLean: If necessary.

Mr. Bell: Yes. That is important.

Mr. Chairman: All in favour of the motion?

Mr. Shymko: Are we not discussing it first?

Mr. Chairman: We have already discussed it.

Mr. Hennessy: I still go back to the argument that, whether Peter or Paul moved the resolution, we should still go back in camera, as we were before, and decide at that time what we want to do. There is not much sense in doing it now. I have no objection. It is just the principle of the thing, that I will not vote.

11:00

Mr. Hayes: Without divulging anything that was in camera, I think it was thoroughly discussed yesterday and the need was shown that we need another counsel to deal with some specific parts of the case.

Mr. Shymko: Is "if necessary" added to the motion?

Mr. Philip: That was part of the motion.

Mr. Shymko: It is part of the motion. Okay.

Mr. Chairman: Is there any further discussion? I think we have already voted on it.

Mr. Hennessy: Let us have a meeting first.

Mr. Hayes: Have a vote.

Mr. Chairman: All in favour of the motion?

Contrary?

Motion agreed to.

Mr. Chairman: We will deal with Dr. Hill's report now.

Mr. Bell: Now, Dr. Hill, go out and make that unnecessary.

Mrs. Meslin: We will try.

Mr. Bell: The outstanding items have to do with statistical information and statistical analysis. Members of the committee, you would be assisted if you would turn to pages 29 through 32, inclusive, of the Ombudsman's report. Therein is contained the basic statistical information that Dr. Hill has included, with quite a comprehensive breakdown of organizations and categories of complaints, both within and without the jurisdiction. The most important two pages are 30 and 31, dealing with the disposition of jurisdictional complaints.

A number of questions were asked of Dr. Hill and his staff in Thunder Bay respecting the information. As a lead-in for committee members who have not been part of the reviews in the past, the committee has had a long-standing dialogue with all the ombudsmen to encourage the Ombudsman and his staff to deal with complaints as quickly as possible in the circumstances, while providing service of the standard that is required in Ontario.

The most prevalent theme of the committee in the area of statistics is, "You are doing a great job, but go and do a better job." In pursuit of that dialogue or review, the committee has annually been most interested to see how the office has performed on a comparative basis with respect to the complaints that utilize all the facilities of the office and require the Ombudsman to perform all of his functions. Those are complaints that are taken right through to the report and recommendation stage, which ultimately may be accepted by the governmental organization or be rejected and, therefore, end up before the committee. One of the areas Dr. Hill and that his staff will address is how well they have done in that regard.

Also as a lead-in--I cannot miss an opportunity to say this--the Office of the Ombudsman probably has one of the most sophisticated and advanced computer systems in existence. Every time I understand it, they change the program. They change the program to improve it, but I have to go back to school every year. What has happened in the past fiscal year to improve and enhance the benefit of a computer system, which is, after all, why you have it in the first place, is that there have been certain changes in the program and the type of data that is included and analysed. That issue will be addressed.

I know you have a prepared statement, Dr. Hill. With that preamble, will you take the committee through it, please?

Dr. Hill: I would like to give you an overview of the whole question of statistics in the Office of the Ombudsman, changes we have made, problems we have had and so on. I think you have copies of my statement. Is it your pleasure that I go through the statement?

Mr. Bell: It is your pleasure, yes.

Dr. Hill: When this committee met in Thunder Bay in August, several of you raised questions about the statistics presented in my annual report. At that meeting, we agreed to be prepared with answers to those questions at our next meeting and we, of course, are prepared to answer any further questions you may have today.

Your counsel, Mr Bell, asked a very important question at that meeting. He noted that on page 5 of my annual report I reported an average duration to close jurisdictional complaints of 113.2 days and that I compared this to an average duration last year of 229 days. He noted what appeared to be an extraordinary improvement and asked for an explanation.

While each figure is correct, they are not comparable. The 1984-85 figure does not include complaints that were then handled as fast actions. Such complaints were handled on the spot, through either a referral or immediate resolution, so no file was opened. With the introduction of our new computer and our desire to report more accurately on our office's work, we decided to count all complaints that come to our office, including fast actions, and to keep careful track of how long it takes us to deal with them. As a result, complaints that took a relatively short time to complete, some of which are fast actions, contribute to the average duration calculated for this fiscal year.

In last year's statistics, if fast action complaints were assumed to have a duration of 30 days, the overall duration for jurisdictional complaints would be 116 days, a figure more comparable to this year's figure.

Mr. Bell: I am sorry to interrupt. To compare apples and apples, the committee would track that 116 to--

Mrs. Meslin: To 113.

Dr. Hill: In 1985-86, almost 2,000 of our jurisdictional complaints were closed in 30 days or less, with an average duration for these complaints of 16.15 days. For those complaints in which the complaint was supported or the complainant was assisted, average duration improved from 319 days in 1984-85 to 270 days in 1985-86, an improvement of 49 days.

Each year my office provides statistical information in its annual report. This information is designed to give the reader a picture of what the office has done throughout the year, to complement the verbal descriptions I give of our work, and the detailed summaries of sample cases.

Over the years, it has been customary for the select committee on the Ombudsman, now the standing committee on the Ombudsman, to request further details concerning the number of complaints handled by my office, the disposition of those complaints and the duration of our investigations. Particular importance has been given to the average time it takes to complete the investigation of a jurisdictional complaint. While this duration statistic is an important and useful tool in reviewing our work, it is important to understand the extent to which our office can control statistics and the extent to which our policies will change it.

Control of duration: My office has no way of controlling what kind of complaint comes to our attention. We, of course, do not turn away difficult complaints and encourage simple ones. An investigation may take a long time, not because my investigator is not diligent, but because there is a great deal of information required and many witnesses to be interviewed to assure a thorough investigation. Although I encourage expeditious file handling, I would not do so to the detriment of a thorough investigation.

The average duration to close a jurisdictional complaint is calculated from the durations of all jurisdictional complaints. However, there may be anomalous groups of files which affect the statistics one way or another. For example, in 1983-84, we investigated overcrowding in correctional institutions. While this investigation took some time to complete, just as we did so, a number of new complaints of overcrowding were received. These new files could, therefore, be closed very quickly, and since there was a large number of them, they reduced the duration of supported cases quite markedly.

11:10

In the other direction, one of my investigative teams is currently carrying some 250 cases concerning the collapse of a particular trust company. Incidentally, that figure has gone up appreciably.

For various reasons, many not within our control, these files have been open for a number of years. Although I anticipate they will be closed in the present fiscal year, they will cause this year's duration statistics to be very high since this large number of files will also contribute to a large number of very long durations to the average.

The length of the investigation in this case was due partly to the fact that I agreed to delay my investigation pending completion of criminal charges. The complaints are also very complicated and we have experienced serious delays on the part of the ministries involved. All of these factors will contribute to a longer duration statistic, but none of them is within my control.

Long investigations on purpose: As noted above, I believe our investigations should be thorough. Perhaps even more important, I have a certain philosophy about complainants and complainants' rights which will sometimes lead me to dig more deeply into a matter if I believe an injustice has been done.

I have spoken to each of the investigative groups in my office to explain this philosophy and have urged my investigators and their managers to be prepared to go the extra mile to correct an injustice, even when it might be tempting to close the file as unsupported on a reasonable amount of investigation. Especially in the field of human rights, I have urged my staff to look beyond the strictly legal issues, and while I believe this had led to just results, it has also lengthened some investigations.

In short, I believe you are right to be concerned about the duration of investigations in my office. Certainly, bad management can lead to unnecessary delays and undue hardship. However, good management does not necessarily mean the elimination of lengthy delays. I believe it is important to remember that all of the work my office does cannot be characterized through statistical information.

In response to another specific question asked by Mr. Bell, I have circulated a table showing the number of complaints in which our investigation was discontinued under section 18 of the Ombudsman Act in the years 1984-85 and 1985-86.

Mr. Bell: Excuse me for interrupting. Members, that is the material that is in tab E of your brief.

Mr. Sheppard: Of the book we got yesterday?

Mr. Bell: Yes, tab E.

Dr. Hill: As you can see, there has been a substantial increase in numbers of complaints closed under section 18. As you will also see from the table, this increase occurred almost entirely in the correctional services complaints.

At the same time, the number of complaints withdrawn or abandoned has decreased. My director of investigations informs me that a review of the handling of institutional complaints has led to the identification of additional alternative remedies for some kinds of complaints. When a referral is made, the complaint is closed under section 18, rather than characterizing it as abandoned or withdrawn when no concrete action could be taken to assist the complainants.

In answer to another specific question raised by Mr. Bell, I have reviewed the duration of the 42 jurisdictional complaints that were supported in 1985-86. These complaints comprised 31 files, for which the average duration was just over two years. Two years may seem to members of the committee to be a very long time to complete an investigation, and it may be helpful to you if I outline the general process involved.

When we receive a complaint, it may first be necessary to clarify a number of points with the complainant to ensure that we have clearly understood the contentions and that the complainant understands the extent of our jurisdiction. This may require a meeting with the complainant, a review of the complainant's documents and, in many cases, a legal review to ensure that we have jurisdiction. It is also often necessary to contact the governmental organization involved to clarify the nature of the decision or omission complained of and to verify some of the basic facts.

The next step in our investigation is to notify the governmental organization formally of our intention to investigate, as set out in the legislation. In the usual case, we ask the governmental organization to respond in some detail to this notice, since a thorough response at this stage will often lead to a resolution of the complaint.

We usually give the governmental organization three weeks to respond, but it is not unusual for it to ask for more time and for us to grant it. Of course, if the delays become serious, we proceed to investigate; but it is our experience that a thorough response will often shorten investigative time and may be well worth waiting for.

The actual investigation may require a review of large numbers of files, interviews with the complainant, government officials and others, a view of the property in question and a review of the government's authority or other legal matters.

Once the investigation has been completed, members of my staff and I discuss it, and if I tentatively support the complaint, I must advise the governmental organization in some detail of my findings, again as set out in the legislation, my tentative conclusions and my possible recommendations.

I must also give the governmental organization an opportunity to make representations to me concerning these, and I try to give them a reasonable time in which to do this. Once I have reviewed these representations, reviewed the matter with my staff again and decided to finalize my conclusions and recommendations, a final report must be drafted.

Again I give the governmental organization an opportunity to implement my recommendations. If no action is taken within a reasonable time, I may suggest a meeting to see whether the matter can be resolved. If no resolution is possible, I forward the final report to the Premier and my file is closed.

At any of the stages, of course, I am open to the possibility that a meeting with government officials and/or the complainant may resolve the matter.

As you can see, if even a few weeks go by between individual events in the investigative process, it is not difficult to reach a duration of a few years. In cases where many attempts at resolution are made or where information is difficult to obtain, the process can be even longer.

Nevertheless, I will continue to strive for more expeditious and quicker case handling so long as it does not--I think this is awfully important--affect the professional quality of the investigation.

That is my opening statement.

Mr. Bell: Dr. Hill, do you have available, perhaps through Mr. Mills, the 42 jurisdictional complaints that were supported--what precisely

was the duration? It was slightly more than two years, but do you have an exact figure?

Mr. Mills: Yes, I do have an exact figure, if you will bear with me a minute. Gail is out of the room. She took a note of it from me. I do not have the computer listing with me, but I was looking for a note I had made.

Mr. Bell: I will ask the second question. Do you have last year's figure as well?

Mr. Mills: Yes. We have both of them. I think Gail has them in her possession.

11:20

Ms. Morrison: The figure for 1985-86, by file, is 761 days.

Mr. Bell: What is it for 1984-85?

Ms. Morrison: For 1984-85, it is 861 days.

Mr. Bell: Even with all the factors you have referenced in your statement, you are entitled to take credit for some part of that 100 days. What I am interested in is, is it possible to give us a duration on the four recommendation-denied cases that were originally reported but settled before this committee cranked up?

Ms. Morrison: Yes, it is. May I get back to you in a few minutes? I will give you a listing.

Mr. Bell: Can you give us the statistics for last year on those recommendation-denied cases that were reported?

Mrs. Meslin: We would have to bring it back.

Mr. Bell: That is fine, if you give it to us in the fullness of time.

Dr. Hill, it is a two-way street. There are many reasons things take as long as they do, as I know you and your predecessors have said, one of which is the relationship that exists between you and the governmental organization being investigated. I presume your duration on public trustee matters is long. I presume your duration on some other ministries or other agencies is not so long. I think the committee is interested in knowing, as you have brought one case to its attention, where some logjams exist.

It is the same as for a litigation lawyer: one of the most frequent questions asked is, "How long is it going to take until judgement?" You have a parallel arrangement: How long until it reaches the Legislature, so called? That is what is behind the question. Give it to us when it is available.

Mrs. Meslin: Mr. Bell, may I make one comment that might be helpful to the committee? As you say, we have had ministries where there have been logjams. One of the more positive things that has resulted, and we hope is showing up in our statistics, is the process of senior people from these various ministries that were slow, as was the case with workers' compensation a number of years ago, and were responsible for exorbitant delays. Since we now have the ad hoc committee with the Workers' Compensation Board, we have

moved cases more quickly in the past six months than in the past six years. We have the same kind of committee with corrections. We hope we can do that when we see logjams, as we would like to do with the public trustee.

Mr. Bell: Mr. Chairman, I have no further questions.

Mr. Philip: It would be very useful--and I have asked for this in the past--to have a listing of the patterns as they exist, of where the logjams exist. My feeling--and I think Dr. Hill will have to confirm this--is that since Dr. Elgie took over as chairman of the Workers' Compensation Board, that organization is starting to be turned around. It is impossible for one man to correct something overnight, but I see definite improvements in the bureaucracy there. I am wondering whether that is one of the areas where we are starting to get some improvements. Are there other areas where perhaps we are starting to get patterns of problems other than the public trustee, which we dealt with yesterday?

Dr. Hill: To confirm your statement on the Workers' Compensation Board, I think your assessment is correct. As you well recall, I was prepared at one point to bring 19 recommendation-denied cases involving the Workers' Compensation Board to this committee. We have none, of course. With the changeover and with the new and quicker administration, we have been able to resolve cases very quickly with the WCB very quickly, and we have no recommendations on our cases. There has been a major improvement in that area.

Mr. Philip: One of the problems I found, and I am wondering whether you are running into the same thing or whether you have had complaints from other MPPs or from legal aid groups and legal clinics, was the length of time it takes from the time you apply for a hearing with the Workers' Compensation Board to the time you get the hearing. Some injured workers are still waiting six and eight months to get a hearing. What are you doing to stop that kind of logjam or to get the situation turned around?

Mrs. Meslin: There is not a number of specific complaints that we have in relation to that from our WCB complainants at this point. They are complaining about the appeal procedure. In effect, they have been denied something they feel they should get. We have not had a huge number brought to our attention about delays in getting to the hearing.

Mr. Philip: When you reveal the cases at your level, you have to go over the complete history of the case. I am sure you must have noted the same pattern I note, namely, that it takes a very long time from the time you apply for the hearing to get it scheduled. We are probably booking right up into January and February at the moment. It is very hard to tell somebody who has a mortgage payment to make, "We are likely to win your hearing, but you are not going to have any results."

Mrs. Meslin: Are you talking about WCB or the Workers' Compensation Appeals Tribunal?

Mr. Philip: WCB. It may be something you want to look at with WCB as a systems problem and discuss with Dr. Elgie.

We are sitting on files, and people keep calling us, saying, "When is our hearing?" We are saying: "We do not have a hearing date scheduled yet. You will just have to be patient." It is very frustrating for somebody who is sitting at home with an injury having to deal with his pain, let alone having no money coming in. He has a kind of anxiety because he does not know what is going to happen one way or the other.

Dr. Hill: We will continue to discuss that with Dr. Elgie.

Mr. Philip: If it will be useful, I will ask my assistant to put together some examples. Perhaps you can deal with those as examples.

Mr. D. W. Smith: I have gone through some of the statistics, and I do not see that you have ever dealt with complaints from the Ontario Energy Board. Is it within your jurisdiction?

I come from Lambton. We have gas storage people who come to me with a lot of complaints about decisions made by the Ontario Energy Board. I wonder whether you have ever dealt with any people on that subject.

Dr. Hill: Could I ask my general counsel? Mr. Zacks is general counsel for the Office of the Ombudsman.

Mr. Zacks: We get a very few number of complaints against the Ontario Energy Board, but we have had complaints against that body from time to time. I would say we have approximately one or two a year. There is not a large number of complaints. To answer your question, we do have jurisdiction.

Mr. D. W. Smith: Perhaps I am out of order, but the gas storage property owners came to me and said they were not notified of a hearing that affected their property. Would you be able to deal with a topic such as that?

Mr. Zacks: Yes.

Mr. Smith: Perhaps I will have to send you a letter to bring you up to date on it. I asked the question because know I about this.

11:30

Mr. Shymko: Within the category of investigations discontinued, Ministry of Correctional Services, 1,223 investigations were abandoned because you could not communicate with the individual. That is almost one third of all the discontinued investigations--a very high number.

You described the abandoned category as meaning attempts to communicate with the complainants were unsuccessful. Can you describe to the committee how many attempts at communication you make? Is it a particular nature of those clients that results in this frighteningly high number of abandoned cases?

Mrs. Meslin: Very often these people in the correctional institutions are there for short periods. They write complaints to us, and quite often they are gone within a week. We get up there as quickly as we can; generally, we are up there within two weeks. They are not there; so we try to trace them through the correctional authorities. Many of them are not traceable, and we chase some of them through the various institutions, but "abandoned" means they are gone.

Mr. Shymko: Is it fear that they do not want to be involved with the Ombudsman once they are out?

Ms. Morrison: Usually their complaints may not be of any importance to them once they are gone; they were complaining about conditions in the institution. A number of these people do not have easy access--mailing addresses and this kind of thing--so once they are gone from the institution, it is very difficult for us to track them down.

Mr. Shymko: Do you apply the same principle with the mental hospital cases, where you had not the same proportion but certainly 28 that were abandoned because you could not communicate with them? Do you see this as a voluntary abandonment on their part or as an incapability or inefficiency of your office to investigate where they are?

Mrs. Meslin: No, I do not think so. We are very interested in making every effort to try to make sure these people want to abandon them or withdraw them. We chase them to whatever extent we can. The difficulty is that you get to the end of the road and there is no address. We keep the file open for a while.

Mr. Shymko: What information do you have on that initial stage when the complaint is filed, where you have a name, an address and an institution? Do you have a detailed image of the problem, that it may be serious or that it may give you the impression of being serious versus less serious or frivolous?

Ms. Morrison: Many of these complaints come in on the blue forms from the institutions, which will have perhaps very little detail about the complaints. We try to follow up those very quickly, especially if they indicate any serious problem. If it is an indication of a serious problem, we do not wait; we get in touch with the institution.

Many of the complaints, especially from institutional complainants, are matters that are important to them but not matters of life and death in the global scheme. Once they have left the institution, it no longer matters to them that their toast does not usually get to them until seven o'clock in the morning.

Mr. Shymko: In other words, we can presume about the 15 Workers' Compensation Board cases in 1985-86 which went to you, and which were abandoned because you could not communicate with them, that the onus was on them; they were not serious.

Ms. Morrison: What we do in one of those complaints is we try to contact the complainant. Then we will write to him, and eventually we will send him a letter that says: "You have not responded to any of our correspondence. If you do not respond within 30 days, we will close your file."

Mr. Shymko: In response to the first communication you receive, you write a letter saying, "Please communicate to this office." If you do not hear within 30 days, you close the file.

Ms. Morrison: No. Usually we try to call them.

Mr. Shymko: In addition to your letter, you do try to call the complainant within that period?

Ms. Morrison: Sure.

Mr. Shymko: At least once?

Ms. Morrison: More often than that.

Mr. Shymko: There is a genuine attempt on the part of your office to track these people?

Mrs. Meslin: Yes. I have no doubt about that.

Mr. Shymko: We should not conclude that the problem is 50:50, so to speak, between your responsibility and--

Dr. Hill: We try to give a pretty high priority to those, like human rights complaints, in my view. I have said, "Give that a high priority," and I think staff do indeed.

Mr. Shymko: Regarding the time-consuming and duration aspects of these cases, is it correct for this committee to assume that the investigation discontinued statistics and the unsubstantiated statistics are resolved pretty quickly, that there is not much duration. For example, let us take the 1,225 abandoned cases. You mentioned that there is a letter and a 30-day period. Do you attach 30 days to those 1,225 cases as a duration?

Mrs. Meslin: Sure, we would have to.

Ms. Morrison: We add it on to whatever the duration has been up to that point.

Mrs. Meslin: If you are counting, you must count everything to be accurate. From the time the case comes in, the clock starts, as it were.

Mr. Shymko: You have a clock going for 1,225 people.

Mrs. Meslin: Sure.

Mr. Shymko: This adds to your duration and gives us a terrible impression of duration.

Mrs. Meslin: That is right.

Mr. Bell: That is part of it.

Mrs. Meslin: Originally, we had this category called fast actions, and many of those fast actions involved correctional institutions. An investigator would be there, handle them all and solve them all. At one point, everybody decided they should not be counted. "Let us not count them." We have decided that anything that comes into the office has to be counted in terms of time, and those are precisely what we are talking about.

Mr. Shymko: It is misleading because the understanding I have had, and most of us probably have had, is that when you put a duration of 30 days, 60 days or a year on a case, you would think the 30-day duration is one of investigative work on the case.

Mrs. Meslin: Aside from that and even more important, the clock continues to tick while a ministry may be doing its investigation. It could tick for three months. It ticks against us. What we have tried to do with this new computer that Mr. Bell does not like--

Mr. Bell: No, I am just saying I do not understand it.

Mrs. Meslin: We have also tried to begin monitoring those things so that next year we can show you the time element, the duration, which is out of our control, so that you can look at both. That would be a better picture for you, how much time we actually spend working on it and how much time it is out of our control.

Mr. Shymko: Exactly.

Ms. Morrison: Mr. Shymko, I do not think you would find it suitable for us to close off a complaint without giving the complainant at least 30 days to get in touch with us, if he wants to.

Mr. Shymko: I agree.

Ms. Morrison: We have to do that kind of thing, but we are also obliged to add that 30 days to our duration.

Mr. Shymko: All of us can assume that the duration for the abandoned category is automatically 30 days.

Ms. Morrison: No, that will not be accurate because you might have someone actually call to say, "I do not want to complain." They call today and say, "I want to complain," and then they call tomorrow and say: "Forget it. I do not want to.

Mr. Shymko: No. That is not what abandoned means according to this. That is what withdraw means.

Ms. Morrison: Withdraw.

Mrs. Meslin: Oh, sorry.

Mr. Shymko: Abandoned does not mean that.

I would appreciate it if there were a way we could see the duration element for each of these categories. For example, under Workers' Compensation Board, your office supported only 12 out of 419 complaints. I would like to know the duration of the 12 cases you supported. These are genuine cases that warrant your support. I would like to know how much time it takes you to resolve those 12 supported cases where recommendations were formally accepted or in some cases were denied--in this case, obviously the accepted ones.

I also would like to know--it would be a very important piece of information--the duration it takes on a very important category. That is the one that is described as "complainant assisted," where the problem was corrected by the government.

Dr. Hill: We can get that information.

Mr. Shymko: That tells us how fast the government acts on that category--in this case, the 29 WCB cases. Obviously, the independent resolved ones may be of interest, but they do not interest me that much because the individual resolved his problem on his own outside your office.

Dr. Hill: Our comptroller says that is not difficult to obtain. All he has to do is make that a category.

Mr. Shymko: A clear understanding when we start talking about duration. The abandoned category is far different when you talk about 30-day durations versus a case where the government acts and corrects the problem. That may result in the confusion that constantly happens, and maybe the unwarranted attack and criticism of the office when you look at the numbers of days--that 160 days you keep mentioning--of jurisdictional problems.

11:40

Dr. Hill: We may have to adjust the categories.

Mr. Shymko: Absolutely.

Mr. G. I. Miller: On the correctional services, where you have the dramatic increase in cases, is there a pattern with the problems that are coming before the Ombudsman?

Mrs. Meslin: One of the possible reasons for that increase is that Dr. Hill has set about going to visit each correctional institution, so there is a resurgence of interest in the Ombudsman. When he comes to an institution, the inmates are aware that he is there, they hear about it. They may not have known about it. Suddenly Dr. Hill comes away from that institution and we have a raft of complaints from the institution. He has visited some 10 or 12 already this year.

Dr. Hill: It is my policy to visit every single institution within the coming and the next year. It is true that every time I go to one, there is a raft of interest, and it is reflected in our cases. That is what the Ombudsman should do. I think it is absolutely essential that every Ombudsman--I have talked to the Ombudsman from Sweden about this--get out and visit the institutions personally. With that comes a swelling of complaints, in psychiatric hospitals and others.

Mrs. Meslin: We have only psychiatric. We do not have hospitals in our jurisdiction.

Mr. G. I. Miller: To follow that up a little further, have you done the same thing with the members of the Legislature? Have you made contact with all them too to work closely with?

Dr. Hill: Whenever we are visiting an institution, I try to, as an advance, make certain contact with the local member. In some cases, the federal member is interested.

Mr. G. I. Miller: It may be outside of the same report, but have you made contact with the members of the Legislature to offer assistance and get acquainted--

Dr. Hill: Yes. All kinds of letters and correspondence have gone out to the local members. Incidentally, they have referred quite a few cases to us. I had some statistics, not long ago, about the number of cases referred to us by members. I think we have a pretty good contact, both written and verbally, with the members.

Mrs. Meslin: We have also begun to have seminars for constituency assistants. We did it in Sudbury just recently, where we had a group of constituency assistants from that northern area come in. We did a seminar for them and we hope we will be able to do that throughout the province.

Mr. Sheppard: On page 29, under Ministry of Agriculture and Food, there was a total of 29, and then on the next page, it broke down to five unsubstantiated; and under investigation discontinued, two were abandoned, two were withdrawn and two were under section 18. What kind of complaints are you getting from the Ministry of Agriculture and Food?

Dr. Hill: Pigs.

Ms. Morrison: The complaints are widely varied. I could give you a couple of examples. One of them relates to information that the ministry put out concerning a particular program for pig breeders and whether the information was misleading to the extent that a particular breeder spent money unwisely on the basis of this information. That is one of the complaints.

We get a lot of complaints relating to the various tribunals that are under that ministry, people who feel they have been unfairly dealt with by one of the marketing tribunals. This is a fairly common type of complaint. I think that tile drainage complaints are under that ministry as well. It is very widely varied.

Mr. Sheppard: Does it concern the Ontario Milk Marketing Board, the Ontario Egg Producers' Marketing Board or the apple tribunal?

Mr. Zacks: Usually chickens and eggs.

Ms. Morrison: Chickens and eggs are the biggest ones.

Mr. Sheppard: Chickens and eggs are the biggest two. Have you had any complaints about finances; that the federal government or the provincial government was not treating them right or they were not giving them a break?

Ms. Morrison: Financing farmers?

Mr. Sheppard: Farming finances, every section of farming.

Ms. Morrison: Not that I am aware of.

Mr. Hayes: It is mentioned here correctional institutions where you abandon or discontinue claims. If an individual in one of those institutions had a complaint and you were not able to reach that person in time because you could not trace him--he was moved out or whatever the case may be--but if this case, for example, would affect someone else in that institution, do you still continue that investigation even though that person is gone, or do you deal only with the individual?

Ms. Morrison: It would depend on the importance of the issue. If we have a complaint which seems to be a critical issue to other possible complainants, then we could open an investigation on the Ombudsman's own motion. That would be a very rare case.

Mr. Shymko: The other question I had was on the nonjurisdictional area, for the Ontario government total of some 2,104. Almost one third of the nonjurisdictional is the Workers' Compensation Board. Whenever you hear workers' compensation and someone tells you it is nonjurisdictional, you start wondering.

Mrs. Meslin: Remember, it can be premature. It can become jurisdictional. They may not have gone through the appeal procedure; they have come to us at the first stage. The adjudicator has denied them, they come to us and we say to them, "Wait a minute, you have to go through the process." They may eventually come back to us and it will be jurisdictional.

Mr. Shymko: Can you describe what the 726 WCB cases deal with that they are nonjurisdictional?

Mrs. Meslin: That is what I am saying. They are premature.

Mr. Shymko: First, they are premature.

Mrs. Meslin: That is the majority of them. They are premature, meaning they have come to us too soon.

Mr. Shymko: By majority, do you mean more than 50 per cent?

Mrs. Meslin: Yes.

Ms. Morrison: Almost all of them.

Mr. Shymko: Almost all of them are premature. By premature, you mean that--

Mrs. Meslin: They have come too soon. They have not completed the appeal procedure.

Mr. Shymko: But they are genuine cases.

Mrs. Meslin: Certainly, they could be.

Dr. Hill: Sure, they could be.

Mr. Shymko: They are jurisdictional, really, from the point of view that they deal with the jurisdictional area.

Mrs. Meslin: It is a technical term when we are talking about an area we deal in but they are not jurisdictional in that we cannot do anything for them until they have completed the process.

Mr. Shymko: You define almost all the 726 WCB cases as nonjurisdictional because, by definition, the vast majority of them are premature.

Mrs. Meslin: That is right.

Mr. Shymko: Would you say the same thing about all the others, for all the other ministries?

Mrs. Meslin: No. In some cases they are premature and in other cases it is that they are asking about an issue that is not within our jurisdiction. They are asking about a court case in the case of the Ministry of the Attorney General, for example.

Mr. Shymko: The other case besides premature could be court.

Mrs. Meslin: Completely nonjurisdictional, things we cannot--

Mr. Shymko: Court would be one.

Dr. Hill: Very much so.

Mrs. Meslin: That is right.

Ms. Morrison: Cabinet decisions.

Mr. Shymko: However, you have courts separate.

Mr. Zacks: A complaint against the courts.

Mr. Shymko: That is a complaint against the courts.

Mrs. Meslin: Not a court case within a ministry.

Mr. Shymko: What is the other one besides premature and court cases?

Mrs. Meslin: Cabinet decisions, for example.

Ms. Morrison: Any number of matters that people may raise with us which are not within our jurisdiction for one reason or another.

Mrs. Meslin: They may write us about a board of education, and in the original letter they may talk about the Ministry of Education, because that is their thinking. "Ministry of Education, I have trouble with my child with a board of education." It may well come in as nonjurisdictional under Ministry of Education because it has nothing to do with the Ministry of Education; it deals with a school board. We would write them back.

Mr. Shymko: We know that boards are automatically nonjurisdictional.

Mrs. Meslin: They do not know. Therefore, that is a nonjurisdictional case.

11:50

Mr. Shymko: However, you list that under education. You have the board problems under the 30 educational nonjurisdictional.

Mrs. Meslin: Sure.

Mr. Shymko: Of the 30 you have here, half of them, or a majority, could be board of education problems--

Mrs. Meslin: They could be.

Mr. Shymko: --which we know, all of us know, are nonjurisdictional. But the Workers' Compensation Board is different.

Mrs. Meslin: Yes. That is why we are saying it is premature. It is not what you think.

Mr. Shymko: There could be a way, just to clarify it because there is confusion once again, you could indicate what you mean by nonjurisdictional when you see WCB. Is there any way that you could indicate the premature thing, particularly in cases that are of vast importance. Do you have that?

Mrs. Meslin: We already have a category we did not put in that talks about premature jurisdictional as opposed to strictly nonjurisdictional.

Dr. Hill: We may have to expand a little bit. If it is not clear to you, then we may have to expand that category.

Mr. Shymko: Yes.

Mr. Chairman: Any further discussion?

Mr. Bell: Dr. Hill, Mrs. Meslin, before we get to this matter that is going to be added to the agenda, Mr. O, so-called, can you tell us about recent developments in amendments to the act? From your information, when do you expect the bill will be tabled, and for this committee, perhaps the most important thing, do you understand that the view is still held that after first reading of such a bill this committee will receive it for clause-by-clause review?

Dr. Hill: We have heard from the Attorney General and it has gone to the cabinet committee on justice. They assure us that amendments are proceeding with them and something should happen when the House convenes, I guess.

Mr. Bell: Is it your belief, upon information from the Attorney General, that it will be tabled in the fall session?

Dr. Hil: Yes, basically.

Mr. Bell: What do you understand is going to happen after first reading in terms of this committee?

Mrs. Meslin: We have not heard anything directly from the Attorney General about whether it will be coming to this committee or not.

Dr. Hill: We know it is going through, though. The process has started. We are not quite clear yet about what will happen with respect to this committee. We have not heard.

Mr. Bell: Unless members of the committee have any questions in that regard, we will go to Mr. O. Silence is consent.

Dr. Hill, the committee has agreed to add a matter to its agenda regarding a previous recommendation-denied case which this committee did not support. Without oversimplifying it, substantively it was on the grounds that there was no quantification--first, no determination of whether a loss of pension benefits had been incurred and particularly what, if any, was the dollar value of that loss. I know that pursuant to direction in the committee's 12th report, your office has done some additional things, and with that lead-in, perhaps you could take the committee through the recent developments. While doing so, I think it would be useful to give us a thumbnail of the facts of that case again so we are all au courant.

Dr. Hill: Mr. Bell, I will ask our director of investigations, Gail Morrison, to take you through this exercise. She has been working on that case.

Ms. Morrison: I handed out a short sheet which gives most of the information you need about Mr. O. As you can see, the complaint was one regarding pension advice. Mr. O contended that he had been given bad advice by the director of the pension funds branch and that he accepted a promotion which involved a change in his pension plan on the assumption that the advice was correct. Subsequently, it turned out that he felt he had lost by transferring his funds to the other pension plan, and he complained to us.

As you can see, we presented this to the select committee, as it then was in 1984. The committee agreed with us that the director's advice was inadequate, but it found that we had not presented evidence that, first, Mr. O would not have accepted the promotion even if he had been fully informed, and second, the Ombudsman had recommended reasonable compensation, but the committee felt we had not shown to its satisfaction that the complainant had in fact suffered a loss.

Mr. O was not satisfied and came back to us and we brought the matter back to the committee again last April. At that meeting, it was decided we could reopen it and bring it back if we wished. Since that time, we have reviewed the matter thoroughly again. We have re-examined all possible ways of assessing Mr. O's loss. We find we cannot improve upon the quantification we made in 1984 at the committee's request. At that time, we said his loss could be quantified as his employer's contributions, which remained in the pension plan--he never got those employer's contributions back--and the right to a pension calculated on his best three years' salary.

In that material, we suggested that the total amount of compensation should be set at the employer's contribution, \$2,239.91, with interest from December 1966 to date. The rationale for this was that the pension plan had benefited from those contributions of Mr. O's employer and this would be a reasonable amount to pay to Mr. O as compensation.

We do not feel we can improve upon that estimate of loss. Therefore, we brought the matter back to you to say we are convinced it is a not unreasonable estimation of Mr. O's loss, to ask you if you wish to reconsider the matter and to ask for your advice on this.

Mr. Bell: Fundamentally, though, do you know whether this gentleman on a pension basis, under the current pension when it vests, will be better off than he would have been under the old? I realize you have to make a number of assumptions in answering that question, but from experience in other matters I know that is an answerable question.

Ms. Morrison: It is an answerable question if you make assumptions that we feel would not be justified. For example, had he not changed jobs, we would have to ask what his career path would have been had he stayed with job A. Would he have been promoted the year after? Would he have found an opportunity for an opening in another ministry? What would his career path have been?

We also have to make assumptions about nothing else happening to change his level of earnings, which affects his pension. We feel we just cannot justify the kinds of assumptions we would have to make to show any better quantification of the loss than this figure, which we know is a real figure.

Mr. Bell: I do not intend to be argumentative, but what you have set forth as your calculation, with respect, is not a loss. It is that which he has paid into the old plan and, yes, by the terms of that plan had to leave there.

Ms. Morrison: That pension plan has benefited from those contributions.

Mr. Bell: All right, but again you have to offset that by what his pension will be.

I will give you an easy scenario. Why do you not just take his actual earnings from the date he accepted the promotion and apply those against the old pension? That is giving him the best consideration. That is a maximum beneficial scenario, which is what the courts will do. Then you take the worst: you take his salary immediately prior to the transfer and you apply the consumer price index factor to it, which is minimal in the circumstances. You do not give him credit for any promotions he might have achieved. You just leave him there. That is your worst-case scenario. Then you have a range.

What you are asking this committee to do is to accept in principle that there has been a loss suffered. I think what the committee said in its report and last time it was discussed is, if you can demonstrate there has been a reasonable consideration of the factors, then it will very seriously consider that conclusion in the light of what it has already said about this case.

Is it difficult to ask someone to run those figures? Are you not getting co-operation from them?

12:00

Mr. Shymko: Can I just be clear here? Do you actually go back to 1966, when the misleading information was given? You are talking 20 years back. Are you calculating that 20-year period of what he normally would have been receiving or contributing now?

Ms. Morrison: That is the problem. You have to make a lot of assumptions about what would have happened to him in the 20 years. One could take his salary just before he made the transfer, correct it by the consumer price index to today, 20 years, and compare it with the salary he now makes, on which his pension would be based.

Mr. Bell: Do not misunderstand me. You do your best and your worst. Your worst is to take his salary immediately before promotion, just apply CPI to it and apply the pension factors under the old plan.

Ms. Morrison: Right.

Mr. Bell: The best is to take the old plan and take his actual salary from the date of promotion forward, and there is your range of pension benefits under the old plan. Then you compare those to what he will actually receive under the new plan and follow that through.

If, within that range, he would have received a better pension benefit under the old plan than he will actually receive, then you would come to this committee with some fairly cogent evidence that a loss has been sustained. However, if, for example, under the best scenario--i.e., taking his actual salary under the old plan--under the new pension plan he will receive a better pension plan than under the old, then yes, he may not have been dealt with appropriately and he may not have been given the right advice, but as the accountants say, or as Mr. Mills might say, at the bottom line he is better off. How do you compensate somebody who is better off even though he may not have been appropriately dealt with?

Ms. Morrison: We can make those calculations. How fair it is to take the salary he earned in his new position and apply the old pension plan to it is the question. It is difficult. Pension plans are not the same; the way the calculations are worked out is not the same. Essentially you are asking us to take his position in the new situation and apply the rules of the old pension plan to that as if it were a position under the other--

Mr. Bell: And you do it on the best and the worst scenarios under the old plan. You cannot say it is not fair to him to have his actual salary applied to the old pension for purposes of determining what would have been. That is very fair. On the other hand, I do not think it is fair to take his old salary and merely apply CPI to it. But you are not doing the exercise to select one of the two; you are doing it to find the range. If the actual pension comes within that range between the worst and the best, then you have some evidence that you may wish to bring to the committee to argue a loss.

If, however, the actual pension he will receive is better than the range, as they say in another context, you may be out of court. I know what the court will say to you, and forgive me for being legalistic: You may have a wrong, but you do not have a loss; and if you do not have a loss, you do not have a cause of action. When you are dealing in compensation matters, your office really has to think along those lines.

Ms. Morrison: Part of our difficulty--not to say we cannot do the kind of calculation you have suggested--is that we also have to take into account the fact that pension plans actually provide different kinds of benefits. One might be able to say, "This pension plan provides spousal benefits, etc., which the other one did not, or vice-versa."

Mr. Bell: All of that is relevant.

Ms. Morrison: That are very difficult, to compare apples with oranges. Then you have to say: "Suppose his wife died; he would get this. If she did not, he would not." Is that something we count in as loss? We can do the calculation you suggest, but--

Mr. Bell: I know. I will shut up in a minute, but I know you may have been trying to do this entirely in-house and it is a very difficult area. I would not pretend to start doing an analysis like this without being assisted by an expert.

Mrs. Meslin: We looked into that possibility.

Mr. Bell: I know it is a cost.

Mrs. Meslin: It would cost a lot of money to get an actuary.

Mr. Bell: I am not sure an actuary is the appropriate person. There are pension specialists.

Mrs. Meslin: There are.

Mr. Bell: They are not cheap.

Mrs. Meslin: They cost a fortune.

Mr. Bell: You may have already spent a lot of time, but he will take the pension and do a total compensation package analysis for you. For example, if there are spousal or survival benefits under the new plan that did not exist in the old plan, I can predict almost exactly, today the new plan is better.

There may have been a preoccupation with the dollars. That is understandable because it is probably the only way of dealing with it in the first instance, but you have come back and said the same thing. We know how

much you had to leave there, and we are presuming that is a loss. You are missing the other half of the equation: What did he get?

Anyway, I have probably said too much right now.

Mr. Hayes: First of all, I think it is quite clear the committee agreed Mr. O had been given wrong advice or bad advice. In this case there are a lot of variables, and I know Mr. Bell is trying to work out another system to solve this problem. I really believe the Ombudsman's office has spent a lot of time and probably a lot of money and I think they have come up with a reasonable figure.

I would like to see the committee go along with the recommendation of this \$2,239.91 to solve this problem. I do not think we should prolong this any more. We do know there were moneys left in the other fund by Mr. O and I do not think we can come back today, 20 years later, and say he is better off today. We should consider what happened at that time.

I would like to move that we accept the recommendation; if we do not, we will back here in six months dealing with this. We are going to drag it on.

Mr. Chairman: Does that include interest? It says here that amount, \$2,239, with interest.

Ms. Morrison: Yes.

Mr. Hayes: That is with interest, I think.

Ms. Morrison: No. It says, "with interest."

Mr. Shymko: Interest is additional.

Mr. Bell: You are up to \$14,000.

Mr. Shymko: That is right. That is 20 years of interest.

Ms. Morrison: Yes, it is very--

Mr. Shymko: What is the total? Could we have an idea of the total? You must have done some calculations. What is the basis of the calculations?

Ms. Morrison: We have to select an interest rate and make some calculation on interest. We have not done that.

Mr. Bell: Did the plan have an interest rate that applied to contributions? Do we know?

Ms. Morrison: I do not know.

Mrs. Meslin: It is a fair amount of money.

Mr. Bell: There is a possible solution, which is a simple interest calculation. Just apply it on the same principle as the courts do under the Courts of Justice Act. It is the prime rate existing in the month, I guess, of the transfer, calculated annually simply.

Ms. Morrison: In fact, because we have chose the employer's contributions as a representative amount for the loss, I think there would be

nothing wrong with choosing an interest rate and an application of simple interest to represent the remainder.

12:10

Mr. Shymko: What was the interest rate in 1966?

Mr. Bell: I do not know; we would probably cry if we find that out.

There is another solution. By the way, that interest rate is the one that could be applied throughout. Courts frequently apply an average now because of the wild fluctuations over the past four or five years, but it is not unreasonable, given some of the doubts expressed by some people, to fix the interest rate that existed then and apply it over all of the years on a simple basis; that would probably double it, but I do not think it would do much more.

Mr. Hayes: I was in the process of making a motion, and I would add to that motion that the interest rate could be based on that period of time.

Mr. Shymko: I have a few questions before we move to motions. I am still not clear on this. You guys keep jumping in with motions like this.

Mr. Chairman: I have Mr. Shymko, Mr. Hennessy, Mr. McLean and Mr. Miller.

Mr. Shymko: Getting back to what Mr. Hayes said, I at first maintained that indeed injustice had been done. Apparently some misleading information was given to the individual, which led to his decision to change jobs and to move from a public service capacity to a municipal service capacity in his employment. Our committee had the following problem: In the 12th report, we said there is no evidence that Mr. O would not have accepted the promotion even if he had been fully informed of the discrepancy in pension. We had no evidence that if the correct information had been given he would have remained in the public service or gone into a promotion in the municipal service.

Do you have evidence to disprove this committee's impression that there was no evidence he would not have moved had he had the correct information?

Ms. Morrison: No, I do not.

Mr. Shymko: So you do not have any evidence to change the first conclusion we had.

Second, in our 12th report, the Ombudsman was unable to determine that the complainant had suffered any loss. Has the Ombudsman today, in September 1986, determined that he did suffer a loss?

Ms. Morrison: No. We do not have any better information about the difference between his pension had he changed and had he not changed.

Mr. Shymko: In other words, today, following the 12th report, we still have no evidence to say that he would not have accepted a promotion even if he had received the correct information, and we have no evidence today that the Ombudsman can really determine that this man suffered a loss, so nothing has changed. All that has happened is that we are trying to work out an equitable compensation, a fair and equitable assessment of his loss, but if we

cannot determine whether he had a loss, why would we be determining compensation for a loss?

Ms. Morrison: The reason we brought it back was that the committee did, at the time it heard the complaint, agree that Mr. O had been misled by the information of the director. On the basis that he had been misled, the committee said, "We can support your conclusion that he had been misled, but we do not have a figure that we feel comfortable with for compensation."

We have looked at the matter again. I do not think we are trying to say any more or less than we said at that time. We are saying that we cannot do any better than quantify it as his employer's contributions which were not transferred. That is the best we have been able to do.

Mr. Shymko: As I say, there is the injustice of misleading information, which is fundamentally wrong. You do not mislead people so that they, on the assumption of the accuracy of information they have received, make decisions that have an impact on their lives, their jobs and their salaries.

The question we have is whether this misleading information, this act of injustice, helped him or hurt him financially. My question to the Ombudsman is, is it his opinion that it hurt him and that he suffered a loss? If the answer to that question is yes, then we start immediately; the man should be compensated and there is no doubt about it.

Ms. Morrison: That is the very calculation we cannot make.

Dr. Hill: We cannot make it.

Mr. Shymko: You cannot make a calculation because it is based on a lot of assumptions. That is your conclusion.

Dr. Hill: We do not have that calculation.

Mr. Shymko: If it is made on a lot of assumptions and calculations-- I am not a lawyer, and I do not know what laws guide human jurisprudence, but apparently, speculations and assumptions are not in the realm of facts. We deal with facts, and the fact is that the man was misled and misinformed. The rest is speculation. Our judgement of justice should be based on a factual event. Misinformation and the impact it may have had; you want us to make that decision on that basis.

Mr. Philip: Surely the fact that a government official, namely, the director, gave misinformation to an employee in weighing whether he suffered a loss means we have to follow the theory of benefit of doubt. We cannot do that now.

One possibility is to give him everything. We could calculate it at today's interest rates or at variable interest rates and give him a lot of money. Another would be to say: "It is an imperfect system. The government was wrong. When the government is wrong, there is a penalty that must be paid. As human beings, without some great assistance from on high, we cannot come up with the most accurate figure. Why not at least say the \$2,239.91 plus the simple interest rate at the time the mistake was made?"

That is not going to give him as much as if we calculated it on the yearly fluctuating interest rate, but at least it recognizes that an error was

made. That is about as rough justice as you can have. But if we do not do something, if we send these people back to get a fleet of accountants and pension experts working on it again, we are going to be here with it for another six months. We are going to be dealing with it again, and we are going to have another fleet of accountants and pension experts who will say, "If you calculated it another way you would get an entirely different figure."

I think what my colleague Mr. Hayes is suggesting, and was trying to speak about, but you wanted to speak to it first--

Mr. McLean: I wonder where you are on the list.

Mr. Chairman: That was a supplementary.

Mr. Shymko: Perhaps I can conclude, following the remarks of Mr. Philip. I think justice should be done and it should be seen to be done. There is no question about it. We must resolve it, and the man should be compensated because he has been misled. It is our speculation whether he goes smiling all the way to the bank when he gets whatever compensation. We do not know whether he is getting a double profit from this. However, we must rectify that because in fact he was misled. The problem is how to calculate it. Following the discussion on the whole list, perhaps we can come back to Mr. Hayes's suggestion.

Mr. Hayes: On a point of order, Mr. Chairman: Is my motion recorded now?

Mr. Shymko: We are discussing the issue.

Mr. Hayes: I just wanted to find out.

Mr. McLean: Is there proof that a mistake was made?

Dr. Hill: Yes.

Ms. Morrison: The committee accepted in its 12th report that he had been given wrong information.

12:20

Mr. McLean: Is there any proof that wrong information was given, other than the fact that it was relayed to you and you took it as a fact that it was wrong information? What proof do you have that wrong information was given by the director?

Ms. Morrison: This committee considered the results of our investigation.

Mr. Hennessy: The committee or the Ombudsman's office?

Ms. Morrison: The select committee heard our evidence on that and agreed the director had given him wrong information.

Mr. McLean: Okay. Is there any proof--and I do not suppose there is--that he benefited by his change?

Ms. Morrison: No. The calculation we cannot make is what difference it would have made had he either had the right advice or decided not to take

the new job. We do not have good information on the difference in his pension benefits.

Mr. McLean: But there can be an assumption that he benefited greatly by changing positions.

Ms. Morrison: You could assume that, except one would think he would not have complained to us.

Mr. McLean: It was 18 years later that he complained.

Ms. Morrison: Right. His complaint to us was, "Had I known I could not transfer my pension benefits, I would not have taken the new job."

Mr. McLean: It would not have taken 18 years to find out, would it?

Ms. Morrison: I can go back through the investigation, but my understanding is that he came to us when he found out he was not getting benefit for those early years. He thought, as people often do, that his pension had been transferred. That is my understanding. I can look that up. Once he was going to retire, he looked into what his benefits were going to be, and it was at that time he found out. That is my understanding.

Mr. McLean: I do not think there is enough proof as far as I am concerned. That is all I have to say.

Mr. Hennessy: The only concern I have is whether he did suffer a loss. A great many people have bonds and other things and do not bother about them. It is very obvious. You just put them away and you more or less forget about them. When it comes time to retire, then you start looking. Some people have registered retirement savings plans.

By the time you get advice from different people, you do not know where the hell to go; you do not know which one to take. It gets very difficult and confusing at the time you come to retire. If he suffered a loss and if the Ombudsman's office felt that after investigation, I will support it. There is no problem.

Mr. McLean: What is the Ministry of Government Services saying in all this?

Ms. Morrison: The Ministry of Government Services appeared before this committee and argued that he did not suffer a loss and that you should not support the complaint. They argued that he was not misled. Your committee found that he had been given wrong information.

Mr. McLean: The committee had proof of that?

Ms. Morrison: The committee made the decision that the information he received was wrong and misled him.

Mr. McLean: What we are getting into here is to another case where we are recommending that Government Services pay this person, and it says, "No, we are the same as the case you dealt with yesterday."

Mr. Hennessy: We have done what we were supposed to do. If we make a decision in favour of him, it is up to them.

Mr. Chairman: Are you finished?

Mr. Hennessy: I call for a vote.

Mr. G. I. Miller: For clarification, the \$2,239 of public service superannuation that was calculated was coming to him before he transferred?

Ms. Morrison: That was the amount of his employer's contributions, which were not transferred from the old fund into the new one.

Mr. Chairman: I will ask the clerk to read the motion.

Clerk of the Committee: Mr. Hayes moved that Mr. O be compensated in the amount of \$2,239.91 plus simple interest calculated from December 1966.

Mr. Knight: On that, may I have a point of clarification from the Ombudsman's office? As far as the amount is concerned, is it true that the employer's portion was not transferable?

Ms. Morrison: It was not transferred. That is the amount of the employer's contribution not transferred.

Mr. Knight: In other words, when Mr. Bell indicated that at some time one might have wanted to look at the minimum amounts as well as the maximum amounts of salary we talked about. What we neglected to mention also was that if he had stayed in his position, the minimum amount was the amount he could not transfer. Therefore, the figure we are talking about is a figure that is easily obtainable to be able to assess a minimum plateau. If he had stayed, at least he would have continued to have his employer's portion.

Ms. Morrison: Exactly.

Mr. Knight: I think we have a justifiable position with respect to a particular amount.

Mr. Shymko: Are we taking a vote?

Mr. Chairman: Is the committee ready for the vote?

Mr. Shymko: Ready.

Mr. Chairman: All in favour of the motion by Mr. Hayes? Contrary?

Motion agreed to.

Mr. Bell: For my assistance and clarification, will your report read that interest is to be the prime rate on the month in question in 1966, calculated on a simple basis?

Mr. Shymko: Whatever the courts do.

Mr. Bell: All right.

Ms. Morrison: Sorry. May I have clarification?

Mr. Bell: It will be the prime rate as of the date of the transfer, which you can supply, as calculated annually on a simple basis.

Clerk of the Committee: That is not what Mr. Hayes moved.

Mr. Hayes, do you mean, for example, that if it was six per cent in 1966, it will be that rate?

Mr. Hayes: The rate at that time, yes.

Clerk of the Committee: Calculated over 20 years.

Mr. Bell: Calculated annually on a simple basis, not compounded.

Ms. Morrison: No. Compounded annually.

Mr. Bell: No. Simple. Courts do not compound interest.

Mr. Shymko: That was Mr. Hayes's motion.

Ms. Morrison: If the rate was six per cent on that date, I take six per cent of \$2,239.91, add it on, and that is the total.

Mr. Shymko: That is right.

Mr. Bell: Times the number of years.

Mr. Shymko: Times 20 years.

Ms. Morrison: Yes.

Mr. Bell: You give us that calculation and we will incorporate it in the report.

Mr. Hayes: That is correct.

Mr. Shymko: We would like to know what the figure would be, as a matter of interest.

Ms. Morrison: I will let you know.

Mr. Hayes: We will find out soon.

Ms. Morrison: After lunch. Allen will do it.

Mr. Chairman: The committee will sit again at two o'clock.

The committee recessed at 12:27 p.m.

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Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on the Ombudsman
Estimates, Office of the Ombudsman



Second Session, 33rd Parliament
Wednesday, September 24, 1986

Speaker: Honourable H. A. Edighoffer
Clerk of the House: R. G. Lewis, QC

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CONTENTS

Contents of the proceedings reported in this issue of Hansard appears at the back, together with an alphabetical list of the speakers taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE OMBUDSMAN

Wednesday, September 24, 1986

The committee met at 2:11 p.m. in room 230.

After other business:

14:32

ESTIMATES, OFFICE OF THE
OMBUDSMAN

On vote 3701, Office of the Ombudsman program:

Mr. Chairman: Do you want to lead off, Dr. Hill?

Dr. Hill: Yes. There are two things I would like to do, with your permission. I would like to make a statement to the committee about the estimates, of course; but also I would like to apprise it of a very recent development, the closing of the North Bay office. I will spell out my reasons for so doing—that will be very brief—and I will explain what I am doing there. That is not included in my statement here, but I have it very briefly and I can answer all questions relating to it.

I will start off with the estimates, but perhaps a few comments regarding my working principles would be in order before I get fully into my submission.

As you know, I took over officially as Ombudsman on March 21, 1984. I wish to point out to members that in the Provincial Auditor's 1985-86 report, for the second time in succession there was absolutely no criticism of my office. I hope this will continue in the auditor's report for 1986-87. In planning for the 1986-87 fiscal year, I was mindful of the three commitments I made on taking office: (1) the need to bring a sound system of fiscal control to the office of the Ombudsman; (2) my commitment to expand service to the public, particularly in northern Ontario; and (3) my commitment to improve staff-management morale and efficiency. Those are my three commitments.

In terms of budgetary control, I have taken the position that there must be a rigid constraint policy throughout the fiscal year. To this end, I have cut back in a number of areas. For example, I have limited staff replacements where vacancies occur and used those complement positions in my new programs. I have severely restricted out-of-province travel and set limits on the cost of hotel accommodation employees may use.

Purchases of books and periodicals, unless they are absolutely essential, have been cut back. Also, the use of summer students, both in the regions and in Toronto, has been reduced from six to three.

I have instituted a new budget policy requiring the ongoing participation of all my directors, assistant directors and managers from the beginning of the budget planning process in the need to rationalize all expenditures in their areas. I have revised and rewritten our purchasing policy to conform basically to the Manual of Administration and have introduced an entirely new Administrative Procedures Manual outlining all administrative practices to be adhered to by staff. I think a copy is available for the standing committee's review. Because of this new management policy, I was able to pay the economic increases awarded to all Ontario civil servants to my staff, and their annual merit or performance increases, without any additional requests for supplementary funds from the Board of Internal Economy.

I would now like to discuss the steps I have taken to obtain the best value for the money spent by the office through strict scrutiny and reallocation of our budget funds.

1. By installing a Centrex III telephone system, we are saving \$23,400 per year. In addition, the purchase of 110 telephone sets at a total cost of \$8,239, rather than the continued rental of them at a cost of \$3,602 per year, will have saved the initial purchase price in approximately two and a quarter years. At the end of March, we purchased a further 37 electronic business sets and will save \$6,726 per year in rental costs as a result. Thus, the total annual savings are \$33,728.

Unfortunately, we have had many problems with the new Centrex III telephone system, and I do mean problems. I have been negotiating with very senior executives at Bell Canada either to improve the service or to remove it. You may be aware that the Management Board secretariat has also had serious problems with its Centrex III system. I have been assured that the service will be improved, but I wish to make this committee aware that I may have to have the system replaced if it cannot be made to work satisfactorily and that this may involve the expense of early

termination of the present service agreement, which runs until October 1988.

2. By subletting 1,910 square feet of our office space to the office of the public complaints commissioner, we have reduced our annual office space costs by \$28,650.

3. The leasing of an integrated in-house data and word processing system has reduced our annual expenditures by \$57,812. In addition, this equipment has eliminated our dependence on external facilities, resulting in a further saving of \$18,200. Early in April, we purchased some of the equipment we had been leasing and renegotiated the lease for a period of just three years. The additional saving to the office after allowing for the \$60,000 purchase will be \$82,000 over the three-year term of the new, shorter lease.

4. The reorganization of our regional office structure resulted in a reduction of staff in Thunder Bay, North Bay and Ottawa from three people in each office to two, at a saving in staff salaries of approximately \$45,000.

5. The establishment of a shortened list of more modestly priced hotels is expected to reduce our travelling expenditures significantly.

6. To make our office more accessible to the public, I have offered the use of our boardroom as meeting space to community groups, ministries and government agencies. The following groups are utilizing the Ombudsman's office: Canadian Opera Women's Committee; Community and Social Services, Thunder Bay; Council on Race Relations and Policing; Ontario Advisory Council on Multiculturalism and Citizenship; Ontario Arts Council; Ontario Association for the Mentally Retarded; Ontario Heritage Foundation; Ontario Native Council on Justice; the Ontario native court worker program of the Ontario Federation of Indian Friendship Centres; and, lastly, the office of the public complaints commissioner.

In terms of my commitment to expand services, I have initiated four new programs: a part-time regional field officers program, a special projects officer program, a community relations unit and a special investigator, ethnocultural issues.

14:40

As you know, the part-time field officers' program is based on the newspaper stringer concept. It is a way in which I can expand our services to communities across the province without the need for office space or support staff. People are hired from within their own community on a part-time, contract basis to work out of

their homes and provide complaint intake and public education for our office.

We have hired our officers for the Windsor area, the London area and the Sault Ste. Marie area. This is a pilot project, it is experimental, and we will assess its usefulness over a one-year period. With the inclusion of staff in Windsor, London and Sault Ste. Marie, we will be able to service directly an additional population of approximately 900,000 people. Kenora and Timmins would increase that figure to more than one million.

The special projects officer program is established from within our investigator ranks. Our more experienced investigators are assigned to areas where I feel systemic problems exist. At present we are working in three areas: (1) housing, which includes an investigation on my own motion of the Moosonee-Timmins Housing Authority; (2) an in-depth study of the concerns of the developmentally handicapped, both in and out of institutions; and (3) an evaluation of the psychological standards used by the Workers' Compensation Board in making awards.

I wish to reiterate that all my regional and special project initiatives in 1985-86, including reorganization, staff recruitment, hiring and training, have been done without requesting any additional funds.

The community relations unit was established on September 8 and is headed by Karen Wheeler-McSweeney. I am confident this unit will enhance our public education program appreciably.

To promote an understanding and encourage utilization of the services provided by the office within the visible and ethnic minority communities, I have created the position of special investigator, ethnocultural issues. This investigator will assist in investigations of complaints made against provincial government organizations by members of visible and ethnic minorities.

My commitment to improve staff management, efficiency and morale includes the following.

1. The appointment of a director of regional services, who reports to the executive director, Mrs. Meslin, and of a co-ordinator of field services, was made to assist in the management of the new regional organization.

2. The hiring from the Ministry of Labour of a personnel officer who is fully acquainted with civil service practices assures consistency with the Ontario Manual of Administration in personnel practices. We also intend to expand the staff

training and development aspect of our personnel function by hiring an employee whose responsibilities would include the co-ordination of staff training, recruitment and the writing of job descriptions.

3. The reorganization of the directorate of public education and communications into the Ombudsman communications and publications directorate and the community relations unit will permit us to better inform the people of Ontario about the services provided by the Ombudsman.

All I have done there is to split in half the public education department that we previously had. The directorate has a staff of three people, who produce a quarterly newsletter, brochures in French and English and fact sheets in 14 languages outlining the role of the Ombudsman. They also handle all media communications. The community relations unit, with a staff of two, organizes public engagements and community contacts and supplies speakers to interested groups, including MPPs and others. I am proud to report that this entire initiative, including staffing, operating and printing costs, has been accomplished once again within my current budget and without requesting any additional funds.

4. We have expanded our bilingual program by seconding one of our investigators to the Quebec Ombudsman's Office and will be reciprocating by having a francophone investigator seconded here from Quebec. We have also held discussions with the federal and provincial officials regarding ways to improve our capabilities in French, and those discussions are continuing.

5. We have introduced a comprehensive car usage policy that outlines in detail employees' guidelines when using cars on Ombudsman business and the Ombudsman's insurance and liability positions.

All the staffing detailed above was accomplished without in any way increasing our permanent staff complement. I want to stress that fact. In 1984-85, that complement was 122. In 1985-86 and 1986-87, it will and does remain at 122. I firmly believe that by reallocating existing staff, I have been able to strengthen the administration and develop new programs which offer expanded service to the people of this province.

In addition, I have introduced the employee grievance procedure, as promised. It became effective on April 1, 1986, and we have already settled our first grievance. To my knowledge, no other grievances are pending.

I have also undertaken a program to visit personally every major correctional and psychiatric institution in the province. I have already visited the Barrie Jail, Metropolitan Toronto West Detention Centre, Elgin-Middlesex Detention Centre, Maplehurst Complex, Penetanguishene Mental Health Centre, Children's Psychiatric Research Institute and the Kenora Jail. I must say I have been well received at all those institutions with total and complete co-operation from the superintendents and people heading those institutions. I will visit the balance of these institutions this year and next year.

As you can see from our 1986-87 estimates, we have requested only a three per cent increase overall to cover proposed merit increases, a moderate increase in services and a one-time increase in supplies. Although we predict our travel costs will increase because of our new programs and higher costs, our substantial savings in communication costs, as pointed out above, enable us to decrease our request for the transportation and communications category.

I want to make a very brief statement about North Bay and what has happened there regarding the North Bay office and its closing. During the past number of months, members of my senior staff have conducted an evaluation as to the most appropriate and effective location for a northeastern Ontario office. The first stage of that evaluation has resulted in my decision to close the North Bay regional office effective October 31, 1986. This statement will be handed out to you shortly or later on tomorrow.

The rationale for closing the North Bay office—and I think the standing committee should know this—is as follows.

1. Statistics since January 1986 reveal an actual percentage decline in all cases handled—fast-action, information, prejurisdictional and jurisdictional—at a time when other regional offices, namely, Thunder Bay, Kenora and Ottawa, as well as the newly opened field offices, all experienced a significant percentage increase in case load. The only other office to experience any decline was Timmins, where my district officer, Mary Lou Iahtail, was on disability leave for a number of months.

2. In terms of statistics, during the past 10 months the North Bay office has reported barely more than one contact per day, and often this has been a telephone call, a fast-action complaint. We have been staffing that office for one complaint per day.

3. Eric Moody, regional office manager for North Bay, recently commented at a regional

services workshop in Toronto that the North Bay office has undergone a substantial decline in jurisdictional matters, and he has forecast little or no change for the future.

4. The North Bay office has engaged in considerably fewer outreach activities since January 1986 than any other regional office, including the recently opened part-time field offices.

14:50

As a result of all of the above and after very careful thought and close consultation with my senior staff, I have concluded that it is in the taxpayers' interest that I now close the North Bay office and, in essence, prevent further financial losses. The controller of my office, Allan Mills, is currently preparing material that will estimate anticipated costs that will be saved in the long run because of this decision. During the coming months, I and my senior staff will be carefully evaluating various centres to decide the most appropriate location for reopening a northeastern Ontario office in some other place.

In closing, I wish to assure the committee that with sound management and planning policies I intend to continue to make every effort to do more with less and, I hope, more efficiently.

Mr. Philip: I have a great number of questions, but I would like to start off with the North Bay office. No one would dispute that if an office is not getting business it should not remain open. If you have an office that is not doing any business and taking up revenue, it means there are enough services that can be reached elsewhere in the north.

I have a series of questions that relate to a basic question: that is, why was it opened in the first place? Who opened it? What kind of studies were done? What demographic studies would have been done prior to opening an office in North Bay?

Dr. Hill: The office was opened before I came.

Mr. Philip: I recognize that.

Dr. Hill: I do not think there are any demographic studies available, or any studies available, that show the reason for opening the office when it was opened. I stand to be corrected by some of my staff who have been here longer than I have.

This is Michael Zacks, our general counsel, who was here at the time. He may be able to speak to it.

Mr. Zacks: I have been asked this question a number of times recently. I was not involved in

the actual decision-making that led to the creation of the North Bay office. I am aware of some studies that were undertaken on the number of complaints being made in different parts of the north, but I am not aware of any demographic studies, studies dealing with population growth, industrial expansion or any kind of sophisticated studies.

As you probably know, the decision was made by Mr. Morand in consultation with senior staff members who were here at the time and who are no longer with the office. I am afraid I know of nobody currently in the office who can give you that advice.

Mr. Philip: We have an office that obviously was set up without any kind of study. If I may wear my standing committee on public accounts hat, I am concerned about why money would be spent setting up an office without prior study to find out whether the office was needed. For example, was a study set up to see whether Sudbury would have been a better location, perhaps with satellite services to North Bay?

Mr. Zacks: These studies may have been done, but I am not aware of them.

Mrs. Meslin: The only thing I can offer is that when we arrived and started to look at the information available, as we looked at the offices that were then operating, I could find nothing that would answer your question. Since we were about to launch other offices, we looked at the information for guidance. There was nothing substantial or indicative of why it was set up; no demographics.

Mr. Philip: I am not being punishing towards you people, because you were not around at the time. I recognize it is hard for you to answer questions related to what may have been the inappropriate management of previous people. To the best of your knowledge, was there no study done to decide whether it might have been more appropriate to open a regional office in Sudbury?

Mrs. Meslin: No.

Dr. Hill: Not to the best of my knowledge. We now do community profiles and research before we open offices, before I make a decision. We have all types of community profiles that look at the areas very carefully. I know of no record regarding how the North Bay office was opened.

Mr. Philip: Is it safe to say that if the Provincial Auditor were to go into your files, he would be able to find out one way or another whether an appropriate study had been done and

whether a set of objectives was in place at that time?

Dr. Hill: I do not think he would find anything.

Mr. Philip: He might find out that there was no study.

Dr. Hill: Yes; that is what I mean.

Mr. Philip: Can you tell us the date on which it was opened?

Dr. Hill: Do you have a rough idea?

Mr. Zacks: No.

Dr. Hill: We can tell you that it was most likely in the 1970s.

Mr. Philip: Can you tell us who opened it?

Mrs. Meslin: I think it was 1979; Mr. Morand.

Mr. Philip: Mr. Morand would have opened it? On whose advice?

Mr. Zacks: On his own advice.

Mr. Philip: He had staff people who told him it would be a good idea to open it?

Mr. Zacks: Mr. McArdle was his adviser at the time.

Mr. Philip: Mr. McArdle would have been the—

Dr. Hill: He was the executive director at the time.

Mr. Philip: Right.

Dr. Hill: I imagine you would have to talk to other staff who were around then.

Mr. Philip: Who would Mr. McArdle have taken advice from?

Dr. Hill: I do not know. Who was the regional director at that time?

Mr. Zacks: Mr. Morin.

Dr. Hill: Gilles Morin was regional director at that time.

Mr. Philip: Can we assume then that it was Mr. Morin who probably suggested that there be an office in North Bay?

Dr. Hill: I do not know the answer to that. I really cannot say whether it was Gilles Morin who made that recommendation. I do know he was the regional director at the time.

Mr. Zacks: Those of us who are here today would be involved in speculation. We were not involved in it at all.

Mr. Philip: Would there be any way of getting a count for us on how many cases were actually handled between 1979 and the point at which you decided to close it?

Dr. Hill: Sure, there is no difficulty in getting that. We do not have it with us right now, but that is available.

Mr. Philip: I am sure it would also be possible to obtain for us the total cost of operating that office from 1979 until the time it is to close.

Dr. Hill: Yes; my controller says that information is available.

Mr. Philip: It might be interesting to see how much it cost for each case that was handled and compare it to what it cost in other parts of northern Ontario.

Mrs. Meslin: The budget total for fiscal year 1986-87 is \$110,000.

Mr. Philip: You spent \$110,000 to handle an average of one inquiry per day in a five-day week. I do not have my calculator here, but it seems you are spending an awful lot of money per case.

Mrs. Meslin: That is what we think.

Dr. Hill: That is why it has now been closed.

Mrs. Meslin: We did reduce the staff at one point also.

Dr. Hill: We reduced it and now we have closed it.

Mr. Philip: I am not disputing that the work in the office was probably worth while for the people who were served, but when we are looking at all of northern Ontario it astonishes me that somebody would set up an office without any kind of demographic profile or rationale. Can you find any reason in the files that North Bay was chosen?

Dr. Hill: We can search again; that is all I can say. I would like to make absolutely positive of that, but a preliminary search would say no. We will give it another exhaustive search. I do not think we can answer that. Right now, I really cannot.

Mr. Philip: Harvey gave us some information—I do not know whether it was in our informal or formal sessions up in northern Ontario—about some of the work he is doing to expand to different areas. Can you tell us on the record how you see North Bay being serviced once the office has been closed down?

Dr. Hill: Our new regional director is here, Harvey Savage. He is drafting a plan and he can speak to this in general terms.

15:00

Mr. Savage: We are in the process of trying to evaluate different possibilities. While we continue our search for a more appropriate location in

the northeast, one possibility is to invite people widely to call our Toronto office collect, as they did before we opened in North Bay, or to use the Timmins office, which is also still active in the north, in the interim.

Right now, we are basically in an evaluation period. We do not want to write anything in stone in terms of setting up yet another institution in North Bay when we are just closing one down; so we are going to try to think of a stopgap mechanism which will ensure that people are still serviced in the northeast.

Dr. Hill: Until we decide where we want to locate.

Mr. Knight: I know the part-time field office worker program is in a pilot stage in other centres. Has any consideration been given to it in the interim, while you are looking elsewhere in northeastern Ontario?

Mr. Savage: The difficulty about writing in stone, as I said, is that to set up a part-time field program now in North Bay would be implementing yet another institution, in a sense, from which it would be difficult to disengage in the North Bay area while we are just trying to look around and see demographically where the best centre is. To keep costs down to a minimum and not raise expectations unrealistically, what we want to do in the meantime is to keep accessibility open in the best possible way that is not going to lock anything in. In the meantime, that may mean publicizing widely in the media and through various community groups to call Toronto collect, as other centres in Ontario do, and to use our Timmins office until the time in the not-too-distant future when we reopen in northeastern Ontario.

Mr. Knight: Have you decided not to go with that as an option or would you still consider it?

Mr. Savage: We certainly have not decided to go with it as an option.

Mr. Philip: In my capacity of trying to judge whether closing it down is a good idea, I am faced with the problem that I do not know whether setting it up was a good idea in the first place. The only way in which we can do that with any government agency is to ask what were the objectives, where were the studies on spending all this money in the first place, since there is a limited amount of money. I want to make it perfectly clear what I am asking you to try to provide, and in so responding you may say, "I have looked through my files and I cannot find anything," and that will tell us as much as if you had found something.

It seems to me we need to find out whether there were any objectives that you can locate, whether there were any statements and any preliminary budgets and projections on how many people it would serve, who it would serve and what the objectives of that office were.

We should have had an indication of whether there was any evaluation process set up, because surely an office should be evaluated at least after the first year on a tentative basis and then periodically after that.

This thing has gone on since 1979; we are into 1986 and it may well be that somebody should have done an evaluation a lot earlier. You should have done one in the first year to find out whether it seemed to be meeting targets and objectives, and if it were not what kind of remedial action to take. This thing has dragged on, you are saddled with it, and an awful lot of money is being spent.

We should try to find out what the total cost of this office has been since 1979. It would also be useful to find out how that cost measures up in terms of clients served and, if possible, to have some comparison with the cost of servicing other northern communities, per case or per client if you want, in similar kinds of conditions. It is not fair to compare it to Toronto or some similar place.

I realize what I am asking you to do is research in hindsight, but I have some real concerns that an office is set up, expectations are built up and it is very hard to pull something out once you have it opened. If adequate studies were not done in the first place, then perhaps that is where the problem was rather than with you people, who are no doubt going to be kicked around for closing down an office. You cannot close down anything, even a jail, without having somebody complain about it.

It would be useful for us, and I think for you, to see whether there is some justification. I do not know whether we will ever be able to say yes or no, but from a public accounts point of view I am shocked that something such as this would have been set up without any kind of study in the first place.

Mr. Savage: I can add one further response. As part of this evaluation it is our intention to do a demographic study of other possibilities in the north and to lay some kind of groundwork. This is all looking to the future.

Dr. Hill: It is a very difficult decision because people are employed there, but there is also a tax dollar involved and we have to get service for that tax dollar. It is terribly hard to do this. We did our own evaluation, which said categorically, "Shut

it down." After we looked at it and studied it, that was that. It was most difficult. Now we will go back once more and take a look at our files and see whether we can find something we have not found yet. It may be there, but we will have to look and see.

Mr. Philip: It will also be useful to find out—and I will appreciate your listing it in case it is necessary to call on anybody for an investigation—all of those personnel, past and present, who were involved in any way with recommending or setting up that office. That will be useful in case the Provincial Auditor wants to look at it.

Mr. D. W. Smith: May I have a supplementary to that?

Mr. Chairman: Yes.

Mr. D. W. Smith: This is not a wild-goose chase or anything, just because of a name I have heard you bring up here, is it? Are you really serious about the facts here?

Mr. Philip: I am serious. I find it astonishing that an office that was set up is now being closed because it has only one person come in per day. Then I find that no study was set up to find out whether in the first place there was a need or market for that office or whether it should have been in another location in the north; and that there was apparently—and we may be wrong about this—no evaluation, at least after the first year, to find out whether the office was serving any kind of objectives, assuming that objectives had been set up in the first place, as they should have been.

I see that as a serious matter. It seems to me that the guy who is not getting proper service in Moosonee, Kapuskasing or some such place may not be getting adequate service there because \$110,000 a year is being spent in North Bay. There is a limit to the public purse, and we have to look at that. That is why I am rather pleased at Mr. Savage saying they are doing studies now before they put in an office so that they will know where to locate it, so that there will be some kind of evaluation and so that we will not be closing them down eight years later, when perhaps an office should be closed down one year later or six months later or should not have been set up in the first place.

Mr. D. W. Smith: Okay; thank you.

Mr. Philip: I want to bring up our northern trip. It is something I have been thinking about for some time, and some of you know it is something I have talked to a number of you about in our leisure hours.

It seems to me that both trips, the one into northeastern Ontario and the latest one, were valuable experiences. I think all members who went there recognize that. From the earlier reports of what we found we have shown that it was useful both to us and to the Office of the Ombudsman. At the same time, I am faced with the problem that hits any of us as southern members when we travel through the north. That is, while we have seen a very small part of the north at a certain expense in dragging the whole committee up there, I was impressed by the fact that, as one of the northern members pointed out to me, in northwestern Ontario alone there are 150 bands and in northeastern Ontario there are six bands.

15:10

I guess I am faced with the question of how we go about trying to ensure that what we have done is not just a flash in the pan but that as a committee we have some kind of ongoing program to be of assistance to and to work with the Ombudsman in serving northern Ontario. It seems to me that while those two trips were useful, to repeat that kind of trip is probably fiscally irresponsible and there must be some other way of doing it.

I hope that you and other members of the committee, the Ombudsman and maybe Mr. Savage, will comment on this. It seems to me that we should have some way of continuously reviewing and looking at northern Ontario, but not at the cost we have just experienced. It was important for us all to go there as a group to have one another as a resource and so forth for the first two times; but having had that experience, the important thing is to have some way of going in, getting information, sharing it with one another and trusting one another in our own investigative abilities.

If you break down northern Ontario, there are a number of districts. In northeastern Ontario you can think of one area, which would be Moosonee, Moose Factory, Fort Albany, Attawapiskat, Winisk and the whole James Bay area.

If you go into northwestern Ontario, you can see basically three regions. There are a number of reserves within a 200-mile radius of Thunder Bay. Then there is the Sioux Lookout area. There is one group there that is close to Sioux Lookout and one group that you could call the outer periphery, 250 miles out, all the way to the Big Trout Lake area.

Another area would be the Kenora area. You could really divide that up into the northeast and the northwest, if you wanted to look at it as a way

of going in. You could go south of Kenora to Fort Frances, and you could go northeast and northwest of Kenora for a separate group.

What I am suggesting—and I have discussed this with a couple of you who I thought knew the area, and also with Mr. Savage—is that it seems unreasonable to spend money on charters when planes from the Attorney General's office are going into these areas all the time. I suggest that we look at the possibility that we could cover most of that area in two summers if we were to divide up into three groups, in each of which there would be a representative from each of the parties, plus representatives from the Ombudsman's office and either a researcher or someone from the clerk's office to take notes and help prepare the report.

If you took those six areas, you could cover most of the bands at very little cost for an investment of one week of this committee's time each summer, and in two years cover most of that area. I leave that for comment; maybe the Ombudsman or Mr. Savage would like to comment on that as a possible way of our keeping in touch with the north and assisting the Ombudsman.

Dr. Hill: Thank you, Mr. Philip. I will just make this brief comment. Those are very helpful suggestions as an analysis of how the north could be handled. At the same time, I have asked Mr. Savage to develop a plan for me, which may or may not be congruent, or it may be mostly congruent, with the suggestions you are making. I have asked him to develop a plan, and there are two things that have to happen. Not only do we have to cover the north, but we also have to handle cases in the north. Therefore, we have to go where the cases and jurisdictional problems are.

I want to make certain when we go there doing cases that one does not lose money and time by just going there to handle a case. I want a wider ambit to deal with this sort of thing. I am asking Harvey, who has had vast experience in Kenora and northwestern Ontario, to develop a written plan for me about how we are going to approach that. I have not heard this proposal of yours before, but I will certainly by all means take that into consideration and see whether we can be helped by it.

Mr. Philip: Maybe Mr. Savage would like to comment on the proposal.

Mr. Savage: I have just heard it today, so I do not have a lot to say about it except that it does sound like an interesting model which I would like to talk to you about further while I am

developing this report. It is interesting in that it seems to set out little working groups rather than a larger entourage which might not be as effective in working more intensively on the problems encountered. As I say, I would like to discuss this with you further and with Dr. Hill, Mrs. Meslin and others in working out the report.

Mr. Philip: I will leave that with you. I think it might be something the committee might want to consider for the future rather than taking the megatrip we have just been through, valuable as that may be.

Earlier in the day, the Ombudsman made reference to the fact that his view coincides with mine, that things are improving under the new chairman of the Workers' Compensation Board. At the same time, I also stated that some of the major problems still exist. The systemic problems relate to the delays. With the help of my assistant, who has worked on very short notice, we have pulled together some random examples of the problems that we see happening in the schedule with workers' compensation. I would like to share those with you.

With the cases we are currently handling unacceptable delays occur in four major areas. The first is with regard to objections to decisions made by WCB operating divisions, that is the claims, vocational, rehabilitation and medical services. The second is the area of access to claim files once an objection has been filed. The third is delays in reaching decisions once claims have been referred to the decisions review branch to deal with the objection. The fourth is payments after a decision has been made.

In addition, one has to comment on the mismanagement and degrading treatment of injured workers, which was our subject at the hospital and rehabilitation centre as well. That is a whole separate area on which I would love to spend some time with you.

I would also like to mention the board's pension assessments. Many of our constituents who have been examined at the board for either a pension review or a pension assessment sincerely feel that the board's examining doctors are very biased, and once the examination is over, which does not last for more than five or 10 minutes according to their testimony, they leave the office with a sense that their self-respect has been diminished, that they have been pushed around and that they have been talked down to.

Let me deal only with the delays. I am going to give you some concrete examples which we have pulled from our files in the past hour and a half. These are ones we have pulled randomly and put

together just to show you the types of things we are dealing with. By the way, all of these files are open for you to come and inspect and we can document them all.

15:20

Mr. J. R.: In our office, he requested a hearing date and we requested a copy of the file on June 19, 1986. The hearing administrator acknowledged our letter via phone on September 4, 1986, the hearing being scheduled for October 10, 1986. Since I had not received a copy of the claims filed, we called the access department September 23, 1986, and were informed that the file was still at the board and that it would be sent by mail immediately. In order to receive the file as soon as possible, I sent a courier over for pickup at my own expense and had the file in my office at 10 a.m.

Mr. D. F.: The letter was sent to the hearing administrator May 29, 1986, objecting to a decision rendered by the review specialist—incidentally, it took several months before rendering a decision, specifically from January to May. Our letter of May 29 was acknowledged on June 5 and the hearing scheduled for August 22, 1986.

Mr. F. C.: The letter to hearing administrator was December 10, 1985. It was not acknowledged until February 7, 1986, and the hearing was scheduled for April 5, 1986.

Mr. N. Z.: On July 30 we requested a hearing date and a copy of the claimant's file. We received a copy of the file on September 19, 1986—that is how long it took to get the file.

The second area I talked about was the delays which occur at the review services division.

Mrs. A. C.: On July 15, 1986, we sent a letter to the review specialist presenting our objections. Two months and eight days later we still have not received a response. We did a follow-up last week and were told that the reason for the delay is the release of the claimant's file from another department.

Mr. A. F.: The request for photocopies of the worker's claim was sent on December 10, 1986. We received the file April 11, 1986. We presented a written objection to the review services on July 18, 1986, and we received a review services decision on December 11, 1986.

There are other problems that workers experience with regard to payments. This problem is noted from the initial acceptance of the claim of payments to benefit subsequent to the appeal which has been allowed. In this instance, I note that many months go by before the claimant receives what is justly his.

For example, in the case of Mr. R. A., his appeal was heard September 27, 1985. On December 16, 1985, we received the decision that the appeal was allowed. The covering letter from the hearings administrator advised the claim file was referred to the claims services division for action, that is for payment.

After numerous phone calls and correspondence to the claims officer, with a copy to the chairman, we were notified by Mr. A on September 15 that he finally received payment. In other words, the whole process took a year from the hearing date until the time he was paid—one year later.

With regard to the pension assessment appointments, I have noticed that injured workers are expected to wait anywhere from three to four months before an appointment is scheduled. A good example would be that of Mr. M. R, where a request for the pension assessment was filed with the board in November 1985. The assessment was scheduled for April 1986. Since Mr. R was not satisfied with the award, he filed an appeal with the pensions adjudicator on the same day as the assessment. In August he received a letter from medical services advising him that an appointment for a medical examination was scheduled for September 22, 1986. It took almost five months for the first request and an additional five months for the second review.

These are all cases that were pulled randomly from my office this morning. With less than 15 minutes notice, my assistant worked through lunch as a result of some of the comments you made this morning. I would very much appreciate having one of your people sit down with us. We have more than 250 or 270 ongoing cases. You can look through any of them; we document the kind of delay that is going on. It is frustrating to my constituents, who are sick people and who have enough to do to put up with the pain without having to put up with the anxiety of not knowing what is going on in terms of their income. These kinds of delays do nothing to help their rehabilitation process and, if anything, from a psychological point of view it brings about a deterioration. This kind of thing simply has to stop.

In addition, as a citizen of Ontario and an employee of the people of Ontario, it makes my job very frustrating. My assistant, my staff and I have many better things to do with our time in trying to serve our people, without having constantly to hassle WCB asking what is happening to the claim and without having to answer phone calls from frustrated constituents,

who are asking, "Why have I not heard from you?" We say, "We are sorry but we have not received a file from the board." That goes on over again. It is bad use of my time, it is bad use of my staff's time and it is very frustrating to my constituents and to injured workers.

I appreciate that some progress is being made with Dr. Elgie, but I would appreciate if you can look at what is happening in the delays. You have improved the way in which your own office handles claims and you recognize the problem that justice delayed is justice denied. As a closing remark, here we have the information sheet turned out by the new internal review system at the Workers' Compensation Board.

Reading from this, it boasts: "When the WCB receives an objection to a decision, that decision can be reversed on the spot by operating division if this is warranted by new information being brought forward. If the decision can be reversed, the objection is referred to a decision review specialist in the decision review branch. The objection is reviewed and the inquiry may be done, which may include interviews," etc. It gives the whole idea that there are great new changes and everything is happening instantaneously. It just is not happening. People are waiting and waiting and something has to be done to put a stop to it.

I have some other things that I want to deal with concerning the Ontario Housing Corp. and the advances we are making in this regard, but Mr. Shymko wants to speak. I ask the Ombudsman if he has any comments on that and I ask to be put back on the list.

Dr. Hill: Before Mr. Shymko speaks, just a quick statement regarding Mr. Philip's comments. I certainly said things were better, but I did not say they were perfect. I think both of us have acknowledged that things have improved greatly with Dr. Elgie and a lot of things he is doing. One thing I did when I came on was to establish a committee between the top people at that board and my top people to expedite cases, to move things and handle complaints. If you give me that documentation, if I can get that material, we will place it before that working committee. I will do that as soon as I get the material from you. That is the best I can do to start things. I will use my responsibility as the Ombudsman and I will direct my staff to put that before the committee as a priority.

Mr. Philip: I suggest the easiest way would be if one of your staff could make an appointment to sit down with my assistant, Carmela Sasso, and

spend the morning or a day. Our files are open to you and we can document all of the things I have just mentioned.

Mr. Chairman: I have the following list: Mr. Shymko, Mr. Sheppard and Mr. Harris.

15:30

Mr. Shymko: Following the remarks by Mr. Philip, I also cannot avoid starting with comments in regard to the North Bay office. The presentation submitted to us obviously was prepared by your office for presentation before this committee. It is dated Tuesday, September 23. It may have been prepared a few days in advance as would normally occur.

Dr. Hill: It was.

Mr. Shymko: Reading the actual presentation, which I am sure you intended to be made without any additional comments, I note the reference to the office in North Bay simply referred to the fact that you would be reorganizing and cutting the staff from three to two. Let me refer to page 4. When you prepared this, all it said was, "The reorganization of our regional office structure resulted in the reduction of staff in Thunder Bay, North Bay and Ottawa from three people in each office to two people at a saving in staff salaries of approximately \$45,000."

Had you not made your subsequent comments, my understanding would have been that you would have reduced the staff in North Bay from three to two.

Mrs. Meslin: No. Mr. Shymko, with the the estimates presentation, we are presenting to you what we have already presented to the Board of Internal Economy on what we have done over the year and what we intend to do. That was not a projection. We have done it during the year. We have already reduced it. That was before Dr. Hill made the decision to close North Bay.

Mr. Shymko: When you say on September 23 that you have taken certain steps to obtain the best value for money spent by the office, one of the things you highlight is that you have cut the staff in North Bay from three to two.

Mrs. Meslin: Yes, we had.

Mr. Shymko: That was done in the past year.

Mrs. Meslin: Over the year.

Mr. Shymko: In making the decision to cut the staff in North Bay from three to two, there is no reference, at least in the speech prepared here, that you would be closing that office. I wonder why you did not print that statement in the

presentation before this committee. That is what I am after.

Dr. Hill: It was very recently done, Mr. Shymko. I have been troubled by that operation for months.

Mr. Shymko: That is what I want to know.

Dr. Hill: I was troubled by it all the way along until last month and the first part of this month. That is the reason. This is a very late development. I woke up one day and said: "This is it. North Bay is to be closed."

Mr. Shymko: How late was the development and when did you make the decision? Was it very recently? Was it a few days ago?

Dr. Hill: It was within the past eight or nine days.

Mr. Shymko: Okay.

Dr. Hill: I was not prepared to do that. I had to keep mulling it over because when people lose jobs it is a serious matter. I did it in the past seven or eight days.

Mr. Shymko: With all due respect to the Ombudsman, as to closing an entire office, as members of this committee, we all try to understand the rationale; why you made that decision in the light of everything you say here. The very first page speaks about your planning and your three fundamental commitments for 1986-87. It is in the light of that long-range plan for 1986-87 and in the light of those three major commitments that we would like to understand why you closed the office.

One thing you speak of as a priority is fiscal control. We may think the reason you closed it could have been for fiscal as well as for other reasons. The fiscal element may have been one of the reasons. Second, when you say your second commitment is to expand services to the public, particularly in northern Ontario, we get confused. Your commitment for 1986-87 is to expand services, particularly in northern Ontario, and yet you announced eight days ago the closing of the North Bay office; can you rationalize the second commitment with the first?

Dr. Hill: There is no contradiction. I have opened offices in Kenora, Sault Ste. Marie and Timmins within a matter of a year or so and I will open another office in northern Ontario. That is not really a contradiction. If I see an office that looks as if it should never have been opened, and I am opening three or four offices on the one hand and closing one office on the other hand, we are still ahead.

Mr. Shymko: So you really do not see this as contradicting your expansion of services?

Dr. Hill: No. It is not a contradiction because I am not cutting back; indeed, I am going to expand again. If I close North Bay, which I am doing, I definitely intend to open in some other area as soon as my projections come in and my staff tells me where it will be. I am not going to be without another office in northern Ontario.

Mr. Shymko: Do you see this as reshuffling?

Dr. Hill: That is all it is.

Mr. Shymko: Is that what you would call it?

Dr. Hill: Exactly.

Mr. Shymko: Expanding and reshuffling?

Dr. Hill: It is not cutting back, but expanding.

Mr. Harris: May I ask a couple of supplementary questions? I too have a concern with the commitment to northern Ontario and with the way in which the decision has been made to close the North Bay office. I say that critically, because as the MPP for the area, for the riding of Nipissing and for North Bay, I am something of an ombudsman in dealing with the government.

Let me say from the outset I have nothing but the greatest of respect for the office in the way it has worked with me. We have been partners in the role of mediating difficulties between the public and the various ministries of the province.

I guess you would understand that I would be critical that to date I have received no notification, no phone call, no discussion, no anything at my office that this was the intention of the Ombudsman; nor, I think, have any of the other MPPs in the district of some 300,000 people who are served by this office. Let me say from the outset that I am critical of the process.

Let me also ask you a few questions, and in my concern say that there is a letter to the editor of the North Bay Nugget that tends to explain your position in this matter. Again, this is not a letter to me but to the Nugget.

In that letter today, you stated that the reason for closing the office is that you are looking for some other, better way to serve northern Ontario and you feel it can be done more efficiently. I am not opposed to using taxpayers' dollars more efficiently. You indicate in the letter, as I understand it—I just had it read to me over the phone—that you now have a study under way to look at how it can be done better. I do not think there is a deadline in it, but I would read into it that perhaps some time next spring we will see how you plan to do it better. In the meantime, the 300,000 residents of northern Ontario served by this office should phone Toronto. There is a toll-free number, so they can call Toronto for service.

Let me ask specifically why you are shutting down a service if you do not have a rationale or plan to replace the service in northern Ontario. You are going to shut it down first; then you are going to study it, then you are going to look at putting something into place. What happens during the six months? Those 300,000 people are calling Toronto. I do not understand that, sir.

Dr. Hill: When they call Toronto we will send people to North Bay, as we do in many other areas of Ontario where we cannot set up offices. I insist that my staff visit the complainant or the person. We have to go to many areas where we do not have offices. We will serve them in that way until I can find a better location, but they will get service. Not only will they call toll-free, but also we will go to help them if there is a difficulty. The costs were prohibitive and continuing.

15:40

Mr. Harris: Can you explain a few things to me? First, why would there be any increased cost for six months to leave the office there until you have the plan in place that is supposedly better—and we will be watching very carefully to see that? Why would you say it is cheaper to service them out of Toronto, to send people up from Toronto to service the 300,000 people rather than from the geographic highway centre of those 300,000 whom they are serving right now, which is North Bay? How is that cheaper?

Dr. Hill: Just a second.

Mrs. Meslin: Mr. Harris, it has to be cheaper in that when you are talking about the number of requests we have had for service into the North Bay office, if we were to send an investigator up on each jurisdictional request we would be nowhere near \$100,000 in one year; or \$50,000, which is what it would cost for half a year to carry on that office. It is absolutely out of sight.

Mr. Harris: Can you explain why about five months ago you signed a firm contract with a five-year lease in a new office that you just moved into, for which you now must pay for the next five years or buy your way out of it?

Mrs. Meslin: We signed the contract because at the time we had not decided to close that office, and that was the best contract we could get for the money.

Dr. Hill: We were hanging on, really, hoping against hope that the situation would improve or the thing would turn around. That is the reason.

Mr. Harris: Over the next six months you are going to service 300,000 people in northern Ontario out of Toronto. You say you can do it

more cheaply. Regardless of that, you are on the hook for the next four and a half years for the rent in that office. Is that correct?

Dr. Hill: Not exactly.

Mrs. Meslin: No. We have come to an understanding with the landlord.

Dr. Hill: We have come to a reasonable understanding with the landlord. It will not cost us that much.

Mrs. Meslin: In a letter yesterday.

Mr. Harris: As of yesterday? I talked with the landlord yesterday morning.

Dr. Hill: Fairly recently.

Mr. Harris: Do you want to share with us what that understanding is? Is that public now?

Dr. Hill: We do not have the letter with us. Our controller can tell you basically what it says.

Mr. Mills: The landlord wants \$20,000 to cover the costs of his renovations, and if we pay him \$20,000 now he will release us from all future responsibilities in terms of the lease.

Mr. Harris: You are going to buy the landlord out for the \$20,000.

Dr. Hill: That is right.

Mr. Harris: There are two staff members there. I notice with interest that throughout your submission you indicate you have set up this new program, all without increasing staff. But in the case of the two staff members, one of whom has been with the Ombudsman's office for 10 1/2 years and the other I am not sure how long, you have said that their services are no longer required.

Dr. Hill: It is a redundant position. However, we are working on an agreement with them; they will leave the service with adequate severance pay, by their agreement and by ours.

Mr. Harris: I am sorry; they will what?

Dr. Hill: We are coming close to an agreement financially about the manner in which they are leaving the service. We have offered the other person a position. She can take it or not take it, depending on what she wants, but she has been offered a position.

Mr. Harris: Within the last couple of days?

Dr. Hill: Yes. This has all happened very quickly.

Mr. Harris: She was not offered a position when she was first notified that her services were no longer required.

Dr. Hill: She has been offered a position, has she not?

Mrs. Meslin: Yes, she has.

Dr. Hill: She has been offered the position; no question.

Mrs. Meslin: The only position we had available was in Toronto. She was unwilling to come to Toronto.

Dr. Hill: We could not make one for her, but we offered her one.

Mr. Harris: She was offered a position in Toronto. You are going to improve service in northern Ontario, but you are offering somebody now in North Bay to move to Toronto.

Mrs. Meslin: We also suggested to her that when we made a decision to open another office in wherever she would be asked whether she would like that position; she would be offered it over and above anyone else. I do not know what else you can do. It is there for her whenever we open it.

Mr. Harris: Concerning the other gentleman who is working there, who has been with you for 10 1/2 years, you have no position within your organization for somebody with 10 1/2 years' experience as an investigator for the Ombudsman's office. Is that correct, sir?

Mrs. Meslin: That is not true. Mr. Moody was offered a position as an investigator, if he wanted one, in Toronto. He declined that offer. He said he would prefer severance from the service. It was his decision.

Dr. Hill: His preference.

Mr. Harris: He was offered a position at the same salary?

Mrs. Meslin: No. He was offered an opening as an investigator. There is no position that is the same as his position. He is an area manager. We have no area managers in Toronto.

Mr. Harris: So you will have no area manager then in Northern Ontario?

Mrs. Meslin: If we have an area manager in Northern Ontario and if he is interested, he will certainly be apprised of that. He has given us to understand that he wants to be—

Mr. Harris: When you say if you will have, do you mean that after you do your study of Northern Ontario that may be one of the positions you have?

Mrs. Meslin: That is right. We may open an office without an area manager. We have many offices without area managers.

Mr. Harris: Can you understand why I seem a little concerned that you are shutting down one office? You have said you are not going to have

an area manager, yet you are going to study to see if you need one. You give the guy notice that he is no longer required. You shut down an office in North Bay and you are going to study to see where the office should be. It may be that it should be in North Bay. I do not know. You do not have a study saying that it should not. At least you have not shared that with us. You have said you are going to do that.

Does it not make sense to you that I would be a little concerned that you really do not know what you are doing? Can you understand why I might come to that conclusion?

Dr. Hill: Not totally, because when I looked at the balance books and what has happened in that office in the last while, it was a terribly difficult decision for me. I know people from North Bay or nearby feel very hurt by it, but sometimes you have to make very tough decisions. I could have let it go on. I could have continued to pay about \$100,000 a year for one complaint per day. I just could not afford that, and I believe the taxpayers could not afford to carry that cost.

Mr. Harris: Do you have the statistics on the Thunder Bay office, prior to moving it to a more accessible location where people knew that it was there? Do you have the statistics that show how many complaints per day you had when that office was on the fourth or fifth floor and nobody knew it was there, versus now when you have it in a high profile position where people know you are there? Do you have statistics on that, sir?

Dr. Hill: I will have to check and see.

Mr. Harris: You have talked in your submission about the promotion you have done for community awareness, to let people know your office is there. Do you have anything in your estimates or any information that indicates how much money you spent in North Bay or Sudbury or the 300,000-person area served by this office, advertising or indicating or promoting that the office was there?

Dr. Hill: We do not have that figure in front of us, but we do know that we have had advertising campaigns; we have had educational campaigns. We have met there and we have had public meetings. Mr. Savage has arranged and worked with Mr. Moody for an extensive outreach program there. Despite all those efforts, we are still getting the same result.

Mr. Harris: Will you get me the statistics on Thunder Bay when that office was made more accessible; how many people attended it versus before, when it was like the North Bay office?

Dr. Hill: We can find out, yes.

Mr. Harris: When was this decision made?

Dr. Hill: The final decision was made about 10 days ago, after much agonizing—give or take a couple of days.

Mr. Harris: Was this decision in the works during the last week of August when a major workshop was held in northeastern Ontario, when all the people serviced by this office, all the MPPs' offices, were invited to send people? I myself paid for and sent two people to Sudbury to attend the workshop. Was the decision in the works at that time when you explained how the North Bay office worked and told all the staff how it worked?

Dr. Hill: No, it was not; that is the first answer. The second is that a major regional workshop was held. All regional staff came to Toronto. It was during that time that we saw that situation in its stark self. That was about three weeks ago. We began to see it then.

Mr. Harris: That was after the workshop was held in Sudbury.

Dr. Hill: That was after the Sudbury workshop.

Mr. Harris: Do you understand why I would think I might have wasted \$400 to \$500 sending my staff to Sudbury to explain how the North Bay office works and how the whole setup is, and now learn it is going to be shut down?

Dr. Hill: It was really to explain how the Ombudsman's office works across this province. It was not just for North Bay. That conference was to explain—

Mr. Harris: Everybody else wasted money too. Now how it works is you dial 1-800 to Toronto. Is my assumption correct on how we now get service?

Dr. Hill: You dial; if you need us, we will be there.

Mr. Harris: We call Toronto and you will send somebody from Toronto.

Dr. Hill: If it is necessary, as we do in other parts of the province. It is the same service as for Sarnia, Chatham, Amherstburg or wherever it happens to be. We will send a body there. We have always done that.

15:50

Mr. Harris: One of your stated commitments is to expand service to the public, particularly in northern Ontario. One of the Premier's (Mr. Peterson) stated objectives is to locate in northern Ontario those jobs that are at least generated in northern Ontario. Can I ask you, sir, where the

investigations that originate in northern Ontario are done now?

Mrs. Meslin: I do not understand the question.

Mr. Harris: An investigator in northern Ontario collects information. Where does that information go? Where is it assimilated? Where is it all handled? Is it not correct that it is now done in Toronto?

Dr. Hill: That is not entirely true. It used to be in Kenora. In several of the centres—Ottawa, for instance—our investigators are doing it from the centre itself.

I insisted on this development. More and more, if an investigation is in a particular centre it is investigated there. This is happening in Kenora and Ottawa, and it will happen other places. I have committed this staff to investigations, over a period of time, right in the centre, if we have the people who can do it.

Mr. Harris: But that is not happening in North Bay or the area serviced by North Bay; it is all done in Toronto. Is that correct?

Dr. Hill: Until we find another place, yes. The situation is the same as in other parts of Ontario.

Mr. Harris: Would it not make sense that it be done somewhere in northern Ontario?

Dr. Hill: We have not had any cases in North Bay. That is the whole problem. We have not had anything. You get one telephone call per day, but how many cases do you get per month?

Mr. Harris: I am still waiting for several inquiries from my constituency office to get back, and the answer is that they are in Toronto being worked on. I will collect those and refer them to you and see what has happened to them in Toronto.

I am very disturbed by the way the information has been put out. I am very disturbed by your shutting down an office in an area of 300,000 people in northeastern Ontario and at the same time telling me you have a study under way and at some time in the future you are going to replace the service. I think it is irresponsible, and I call on you to reinstate the service.

If you have something better, lay it on the table and lay it out for the people of Ontario. Call the MPPs in that region together and share that information with them. Show us you have a plan before you take that service away and give those 300,000 people a 1-800 number and tell them, "We will service you out of Toronto."

I do not know whether a motion is required for that or whether it is even in order. I am not a formal member of the committee, but I submit

that is what should be done before you make those changes.

Dr. Hill: I thank you for your suggestions, and I will certainly consider them.

Mr. Harris: Thank you.

Mr. Shymko: Thank you for the supplementary. I think you realize very well, Mr. Ombudsman, there are sensitivities about your decision, made quite recently to the surprise, not only of MPPs from the area such as Mr. Harris but of all the members of this committee.

We have tried to work hand in hand and to share your concerns about the viability of some of these offices, either in terms of the case loads or the nature of services. If even the members who travelled with you in northern Ontario had an inkling that such a decision was to be made, it would have softened the psychological, mental and other blows of your recent decision and statement.

Dr. Hill: It was a very recent move. I just agonized over the past number of months, and I did not make that decision until recently. An Ombudsman, in his office, has to make certain internal decisions that are tough. I made this one, and I am sorry it was not done in a way that you—

Mr. Shymko: Let us go back to the commitments. One of the last commitments is to improve staff morale. Do you think there is an improvement in the staff morale for the two individuals who are in this predicament? I know you have done your best to provide options, alternative employment and so on.

Dr. Hill: Staff morale suffers frequently when you have to fire and hire people. I have fired many people since I have been in that office as Ombudsman. If the staff morale suffers, then it suffers; but I have had to make a decision to let people go in many cases since 1984 when I believed people should not be in a particular job. That does not help staff morale for that person, but overall I thought and still believe that it made for a better administrative office.

You have to make those decisions. You have to let people go, and you have to take your chances to a certain extent on staff morale rather than keep certain people there who should not be there.

Mr. Shymko: A number of people are being hired, as we can see from your submission. I am sure you would value the years of experience. One of the staff members has had 10 1/2 years of experience in that office. You do realize it was a shock to them to be told all of a sudden, after 10 years, "We do not need you any more." Is there a

genuine attempt on your part to make the maximum efforts to retain these two individuals?

Dr. Hill: I have done what I think is necessary and what I can. We have made the kind of offers I wanted to make. In the end, it is my decision, and I have to depend on my own personal judgement in a situation where I have watched and seen staff. I am not talking about any particular person now. I am talking about the whole idea of staffing. It is my judgement whether a person has to go. I know I will be criticized for it by some people, but I still have to make that judgement. It is an internal matter. It is a decision I think I have to make after assessing certain basic information.

Mr. Shymko: You mentioned that the Timmins office, in comparison with North Bay, is relatively in the same predicament. Can you give us the figures of the case loads; the diminishing case loads of Timmins versus North Bay? Is there a parallel or a similarity?

Dr. Hill: We had a very sick person there for a while, but before that person became ill the office was functioning quite well and we were receiving a good number of complaints. That person was ill and came back on the job quite recently; there is every reason to believe it will function fine.

Mr. Shymko: You are not making a comparison.

Dr. Hill: No.

Mr. Shymko: The prospect of increased case loads and services in the Timmins operation is much better than in North Bay?

Dr. Hill: I think so, yes.

Mr. Shymko: When you made your decisions to cut the staff from three to two in North Bay, Ottawa and Thunder Bay, were you contemplating the same cutting of staff in Timmins?

Mrs. Meslin: Timmins had only two.

Mr. Shymko: I was not aware of that. I thought there were three. In the creation of the part-time field office programs, Windsor, Sault Ste. Marie and London are operating now and you are contemplating having one in Timmins.

Dr. Hill: I do not understand you.

Mr. Shymko: I read on page 6, "With the inclusion of staff in Windsor, London and Sault Ste. Marie, we will be able to service directly an additional population of approximately 900,000 people. Kenora and Timmins would increase that figure to more than one million."

Mrs. Meslin: No; that is with Kenora and Timmins as they are and what they service.

Mr. Shymko: They will be included in that service area?

Mrs. Meslin: That is right.

Mr. Shymko: You have no intention whatsoever of obtaining the services of a part-time field officer for Kenora and Timmins?

Dr. Hill: Not at this time.

Mr. Shymko: With the closure of the office, the saving is \$100,000.

Dr. Hill: I will ask my controller.

Mr. Shymko: Is that the saving?

Mrs. Meslin: That is not the saving.

Mr. Shymko: You would have to subtract the \$25,000 lease and the severance from that.

Dr. Hill: My controller can speak to that.

Mr. Shymko: What is the saving?

Mr. Mills: In the current fiscal year we expect we will overspend North Bay's budget allocation of \$110,000 by \$42,000, primarily because of the \$20,000 payment to the landlord and the severance payments to the two employees.

16:00

Mr. Shymko: You will be paying some \$42,000 more than the \$110,000 normally allocated for that office. That increase is the result of your decision to close the office. Closing the office in fact is not a saving in the first year.

Mr. Mills: Not in the current fiscal year; later.

Mr. Shymko: Obviously you will recover that, probably over the next year.

Dr. Hill: Over the next two or three years.

Mr. McLean: You said you were going to open another office.

Mr. Mills: Hypothetically, in the subsequent fiscal year, if we open an office on July 1, we estimate we will save \$43,000 during 1987-88. Once that office starts to operate for a full year, wherever it is located, the ongoing savings will be about \$21,000.

Dr. Hill: It depends on whether we open an office, as Mr. McLean was asking, or whether it is a field rep operating out of his own home part-time. We have not decided that yet. It can be an office. It can be, more than likely, a field rep operating out of his own home, which is a very low-cost budget item.

Mr. Mills: You will appreciate that many of the big expenses are rental accommodations. If you hire somebody to work, for example, three days a week out his own home, it is going to be a low cost.

Mr. Shymko: Going back to the concerns Mr. Philip and Mr. Harris indicated, was any study at

all done of the North Bay office internally? We have shared some of these concerns during estimates. At our meetings in the past we always spoke about the regional offices. There must have been some internal analysis and some study of the viability of that operation.

Dr. Hill: As I said earlier, what we are going to do once again is search our files to see whether there has been a study, an analysis or anything done. You will have to give me a little time to look and see whether I have missed something.

Mr. Shymko: You made your decision without any study?

Mrs. Meslin: No; that is not so. You have to understand that we hired a director of regional services about six or eight months ago. After Mr. Morin had left for higher things we did not have one for a long time, because we were waiting for Mr. Morin to come back or not. Then we made a decision: we had to hire somebody new.

From the time the new person was hired he had to familiarize himself with all the operations and then start to analyse for our purposes all those offices. What is the output? What is happening? How are things working? During that time we began to get statistics that have concerned us more and more, far more in relation to the North Bay office than other offices.

Mr. Shymko: Did you consider the possibility of discussing with this committee the dilemma of the operation of the North Bay office and indicating to the committee that at some time in the future you might be faced with the decision of closing it? Perhaps this advance stage of notice and expression of concern would be a better approach than to surprise everybody with the very recent decision.

Dr. Hill: I did not consider bringing this matter to the standing committee. I have notified, am notifying and will notify them about it, but I consider it an internal decision that the Ombudsman has to make.

Mr. Shymko: That is probably the difference of opinion that some of us share with you. You may perceive even now that it is an internal decision which is none of our business.

Dr. Hill: I did not say that. I do not say it is none of your business. But I do say it is an internal decision that the Ombudsman has to make.

Mr. Shymko: Obviously, the decision is made by you, but I am sure you sympathize with all of us who are concerned and affected by such decisions and would like to share with you what decisions are being made.

Dr. Hill: It is the toughest decision I have had to make since I have been Ombudsman. I must say that. I knew it was not going to be popular, I knew it was going to be no-win and I knew it was going to be difficult, but I had to do it.

Mr. Shymko: Most of us would have appreciated it had there been more of a discussion or involvement and sharing of that concern. It might even have lightened the psychological, emotional and mental burden you went through in making the decision.

Dr. Hill: It was tough.

Mr. Shymko: I do not think you should be hesitant in sharing that with this committee. We may even perhaps be helpful in looking at some alternative solutions.

Dr. Hill: I accept that.

Mr. Shymko: There is a feeling that we may have been ignored, and as you know politicians are very sensitive when they feel the world ignores them.

Dr. Hill: I caught that.

Mr. Shymko: In concluding this whole issue of the North Bay office in comparison with Thunder Bay, I want to ask you what you think of Mr. Harris's statement that had there been more of a profile, more of an attempt to promote the office, the results of the case load would have been different because you were venturing in an affirmative way to promote the office.

Dr. Hill: We have one of the most experienced, longest-serving servants of the office in North Bay, Mr. Moody. He had been there 10 years and he knew that community upside down. In his concluding comments to us he saw no change; the jurisdictional stuff was going to drop and the situation was not going to improve. That is from an experienced professional worker. It was his own statement, looking at that situation and what the facts demonstrated to us. He said he saw no change in the situation. That is from a person who knew North Bay and had worked for the office for 10 years; those were his comments and suggestions.

Mr. Shymko: My conclusion on the North Bay discussion is simply to ask if you perceive that any motion or recommendation by this committee asking you to reconsider your decision or to provide a period of contemplation and meditation for another year of temporary extension before final decisions are made would be constructive? In other words, do you think such a decision or recommendation by the committee would be constructive in any way?

Dr. Hill: I respect your decision, and your contemplation. I also respect the fact that you want to say this to me and do this. But I have to continue to act like an Ombudsman in the sense that I have to make that decision. A decision has been made, people have made plans, contracts have been drawn up and I cannot reverse it.

Mr. Shymko: In other words, a statement by this committee will not reverse your decision; you feel it is final, period.

Dr. Hill: That internal administrative decision is final.

Mr. Shymko: Okay. I am going to two other points. I want to ask you about the mandate of the special investigator in the ethnocultural area. The mandate, you mentioned, is to promote understanding—

Dr. Hill: And to investigate cases.

Mr. Shymko: And to investigate. Will he be investigating—

Dr. Hill: He or she will be investigating cases in the ethnocultural community.

Mr. Shymko: Okay. I had understood he would be assisting somebody else.

Dr. Hill: No.

Mr. Shymko: He will be doing direct investigation.

Dr. Hill: He or she.

Mr. Shymko: That individual will be encouraging the use of these services because you feel there is a lack of information about the service of the Ombudsman.

Dr. Hill: I do not think it and feel it, I know it. One person in four in Metro is Italian. There are now 250,000 blacks, 200,000 Chinese, 150,000 Greeks—I can go on and on. I got around this community formerly when I was chairman of the Human Rights Commission.

I have been criticized roundly for not getting into the activities of those communities, finding out their complaints and handling their problems. I thought it was time now to give that community, not only in Metro but in other areas where there are major ethnocultural communities, better service. That is what I intend to do with that new worker.

Mr. Shymko: I congratulate you on that decision, and I am happy to hear the individual will actually be doing investigative work, not acting as some form of consultant in this.

Dr. Hill: He will consult and then investigate.

Mr. Shymko: You do realize the special nature of that segment of our society on the basis

of ethnicity and race. Do you see any other segment of society that would warrant the establishment of a special investigator—women, for example, or the handicapped?

Dr. Hill: We have one.

Mrs. Meslin: We have one already for the developmentally handicapped.

Dr. Hill: We have developed a program for the developmentally handicapped.

Mr. Shymko: Do you see any other areas you might be looking at?

Dr. Hill: There could be many others, but I do not have the money.

Mr. Shymko: You do not have the money. Has that person been hired?

Dr. Hill: No. There is a competition; it is an internal competition.

Mr. Shymko: What is the salary of that individual?

Dr. Hill: It would be an investigator's salary. The range for an investigator is something like \$33,000 to \$39,000.

Mr. Shymko: The next question I have is with regard to the list of languages. Can you tell me what languages are being used in the printing of the bulletin? I think you refer to that somewhere. A figure of 14 has been mentioned, I believe.

Dr. Hill: We have people who can handle 24 languages.

Mrs. Meslin: Twenty-eight.

Dr. Hill: Twenty-eight languages.

Mr. Shymko: You are printing some kind of—

Dr. Hill: We are printing fact sheets in 14 or 15 languages.

16:10

Mrs. Meslin: We hope to print them in more as we can afford it. We have taken the predominant languages and done those first, Portuguese, Italian, Ukrainian—I cannot name them all, but there are 18 at this point.

Mr. Shymko: Do you have a list?

Dr. Hill: We can get that for you.

Mr. Shymko: I want to stress that one has to be careful when, in the selection of these languages, you use criteria based on census or population so that you do not insult some other group as to why it does not have it. Once you venture into that area you have to be careful. Is the criterion you use predominance of case loads, population or demography?

Mrs. Meslin: Demography.

Mr. Shymko: Demographically, basically.

Dr. Hill: We consult the ethnic press on this, too; the Canadian ethnic press. We get a lot of advice from them. We also consult the Secretary of State and, internally, the government agencies here which will tell us the kind of groups that we should be contacting.

Mr. Shymko: Are you monitoring whether the cost of publishing or printing this is justified in terms of the increase in interest or requests for services?

Dr. Hill: I will have my executive director answer that.

Mrs. Meslin: Not at this time. That is one of the areas we hope our new investigator will look into as part of his or her job.

Mr. Shymko: I suggest it would be a good idea to do this—

Dr. Hill: It should be looked at.

Mr. Shymko: —to see whether there has been an impact by the establishment of this office related to the costs, because one is fiscally responsible, as the Ombudsman has stated on a number of occasions.

Dr. Hill: Yes.

Mr. Shymko: My last question—and I do not have the case with me—is about one with which the Ombudsman is very familiar. It deals with an individual who was involved with the sheriff's office. I will not go into that.

Dr. Hill: Oh, yes.

Mr. Shymko: I have one question that concerns me from the point of view that an investigator normally makes a preliminary report to you and then you follow the investigator's report and make your own final report on a particular case. Very often I would imagine the investigator's reports, comments and observations are important in terms of the impact they may have on you, as the Ombudsman, and on your final recommendation. Am I correct in assuming that?

Dr. Hill: That is right.

Mr. Shymko: How do you dissociate an investigator's purely personal assessment of the behaviour, nature, character or personality of an individual? The reason I ask—and I have concerns—is that in looking at the preliminary report on this individual, one received the impression that this man was extremely violent. In listening to the report, one would have been scared to death even to meet the individual. That is the impression one had from some of the comments on the individual's behaviour.

I wonder whether your investigators are careful to segregate their personal impressions from the objective study of a case and the problem. I felt in this case—and there may be others; I do not know—that one has to be very careful when one starts commenting on an individual in terms of what one thinks about his personality or behaviour. Looking at the investigator's report, that is the conclusion I would have reached and it would have been, in my opinion, somehow false, though not totally.

Dr. Hill: I will ask my director of investigations to comment, and to be careful.

Mr. Shymko: Do you stress that one has to distinguish that?

Ms. Morrison: Yes. I would be very surprised if a report contained an investigator's personal feelings about a complainant. What you will often find in a report is that an investigator has taken documents written by other people, interviewed other people and written down their impression of the complainant. In the case you speak of, I believe that is what the report contained. That kind of information is part of the investigation and has to be included to the extent that it deals with the issue at hand.

My investigator would never comment on the character or personality of a complainant if the very question involved was not whether that person had become angry—

Mr. Shymko: Or had tendencies to be violent or something.

Ms. Morrison: Yes; exactly.

Dr. Hill: I share your concern. I am not talking about that particular case, but we certainly advise our investigators to be awfully careful about that. We cannot let that kind of bias slip in.

Mr. Shymko: That is what I wanted to hear.

Dr. Hill: I think our top people know we just cannot have that; although it might happen, we are not perfect. Every now and then someone might slip.

Mr. Shymko: Yes.

Dr. Hill: I think Gail has insisted on that performance, and so has Eleanor.

Mr. Shymko: I wanted to stress that to you, sir, because we are all human and very often one tends, without even being conscious of it, to express a bias on a very personal assessment of an individual and put him down. I thank you for stating that you are stressing this to your investigators not to allow that to happen.

Also, I am sure you realize that individuals who, for a number of years, are fighting for some

cause and feel they are being hampered by the system or by ministries, will naturally develop a certain trend of behaviour which is highly emotional. I know you understand that one cannot reach conclusions from that. That is all.

Mr. Sheppard: I have a couple of questions and a couple of comments. First, Mr. Philip said there were two trips to northern Ontario. I want to remind the committee and put it on Hansard that on the last trip we had to Sioux Lookout, Fort Severn, Big Trout Lake and North Bay there were no Liberals on that committee. They could have sent at least two Liberal members. I believe they missed a lot on that trip to northern Ontario.

Mr. Shymko: He is not being biased.

Mr. Sheppard: How many Indian bands are there in Ontario? Second, how many Indian bands are there in what we call northern Ontario and how many in southern Ontario?

Dr. Hill: Mr. Sheppard, we have that information. My regional director stepped out to go to the bathroom or someplace and he has that at the top of his head. I do not know exactly how many. I know there are more than 100 in northern and southern Ontario. I just do not have the exact figures, but they are available to us and I can get you that information and send it to you almost immediately. I just do not have it off the top of my head.

Mr. Sheppard: In his report, the Ombudsman said he saved \$23,000 a year on telephones; and on page 3 annual savings of \$33,000. Then on page 4 he saved \$57,000. Getting back to North Bay, he will save \$45,000. It is going to cost \$20,000 in extra rent to close the office in North Bay.

I am surprised that this information was not in this report. The question was asked of the Ombudsman and he said he knew eight days ago. When Mr. Harris asked him he said approximately 10 days.

I do not know whether it is eight days or 10 days but it should have been in this report. I am surprised that the Ombudsman did not at least notify the member for Nipissing (Mr. Harris). I am surprised that he did not bring it to the attention of this committee. Who is the watchdog over the Ombudsman? We had the public trustee in here yesterday and I got the feeling that the Ombudsman wanted to be the sole boss over the public trustee, which I question and on which I have to hear more evidence.

I want to know from the Ombudsman why we were not notified and why he did not notify the

member for Nipissing. I feel that you slipped in your position as Ombudsman for Ontario.

Dr. Hill: I have never claimed to be perfect, Mr. Sheppard. I will say that we wrote a letter to the North Bay Nugget. We have sent out or are sending out letters to all MPPs—MPs too—and community agencies. The letter is going out from Mr. Savage with my signature. The community is being well canvassed. This happened between eight and 10 days ago. That is the only way I can answer that. Correspondence has gone out. People are being notified, are being told or are being phoned. That process is going on. Once again, as I said, this is still very recent.

Mr. Sheppard: I accept that, but I do not accept that neither the member nor this committee was notified before you put it in the paper. If it had not have been for Mr. Harris bringing this to our attention today we would not have known anything about it. Some of us who live in southern Ontario probably would not have known about it for ages.

16:10

Dr. Hill: I thought the proper place to make the statement, as I did formally, was before the committee; I made a formal statement about it here today, when the committee met in whole.

Mr. Sheppard: I disagree with you on that one. Here is the press release you send out every week or every two weeks.

Dr. Hill: That is an internal document.

Mr. Sheppard: You could have had it in this one. Will it be in next week?

Mrs. Meslin: That is an internal input.

Dr. Hill: That is internal. It is not a community newsletter.

Mrs. Meslin: A lot of the employees did get it.

Dr. Hill: That is an internal newsletter. It does not go out to the community at all.

Mr. Sheppard: It goes only to the members.

Dr. Hill: It goes out only to the staff of the Ombudsman's office, to the secretaries, investigators and clerks. That is everyone it goes to.

Mr. Sheppard: Mr. Moody was with you for 10 1/2 years. Did he get the legal notice before he was advised that he would be let go or that he could move to Toronto?

Mrs. Meslin: As a matter of fact, extensive discussions were held with Mr. Moody before anything happened. Mr. Moody was asked his opinion about the North Bay office before the decision was made, and the finalized decision was not made until Mr. Moody made his report to

our workshop. After his report, Mr. Savage had intensive discussions with him in Toronto and then flew to North Bay to talk personally to both Mr. Moody and the secretary there to explain what was happening, to tell them what the options were and to go into any of those discussions. In fairness to the people involved, they had to be spoken to first, primarily.

Mr. Sheppard: I have one last question for the Ombudsman. How many people do the offices in southern Ontario and the offices in northern Ontario serve? I know it will vary.

Dr. Hill: In Windsor and London, we can get that figure for you. They are doing very well. The figures are increasing every month for Windsor, London and others.

Mrs. Meslin: Are you asking for the number of people served altogether?

Mr. Sheppard: The number of people served.

Dr. Hill: We can get that for you just like that, but we have not got it at this instant. Generally speaking, those offices are booming.

Mr. Philip: It is my view, and it may not be shared by others, but I do not think individual personnel decisions of the Ombudsman are the business of this committee. If there were a major personnel problem in the Ombudsman's office and, as in the past, there were not a grievance procedure, which is being put in under the present Ombudsman, it might be of some concern to this committee; but it is pretty dangerous if this committee starts looking at individual personnel decisions of the Ombudsman. I do not think it is our job. If you look at our mandate, our job is to look at the role, mandate, operations and policy of the Ombudsman but not individual, one-by-one decisions. It would be very unfortunate if we started taking individual cases and airing them publicly when there is an appropriate grievance procedure in place.

Personnel matters are matters you do not deal with in a public manner. No municipality deals with personnel matters publicly; it is always in camera and is usually done by administration, though it may be ratified by a committee of the council. There may have been some judgement calls that could be questioned about whether the MPP should be notified before a letter goes to the newspaper and so forth. That is being done, and I am sure it will not happen in the future if that kind of thing occurs. It may have been a matter of letters crossing or something.

The Ombudsman had the good grace to come before us with what I do not really see as a policy change, because if you listened to what Harvey

Savage outlined he explained the policy direction of which this happened to be part. The office is not going to be closed until the end of October and the Ombudsman had the good grace and courtesy to advise us of it. I am not convinced it is a policy change.

As a committee, we have been informed. I am not sure it is our job to have the Ombudsman run to us with every decision he is going to make unless it is a major policy change. I am not sure this is a policy change. It is a change within a new policy or outreach program that has been developed by the new regional director. We have been looking at that. For the first time, it seems there is going to be some evaluation and demographic studies before money is spent, rather than after it is spent and rather than having to hurt people inadvertently by stopping something that has been less than successful.

I would like to deal with some of the statements on the Ontario Housing Corp. This is something I have been concerned about over the years. I have some correspondence. I will not talk about individual cases in terms of names, but I would like to talk about some of the policies we see changing in Ontario Housing. I like to think this is a result of the Ombudsman's intervention and some of the systemic problems I brought to his attention and to the attention of Gail Morrison.

One of the letters is dated September 4 and is from Ms. Morrison. She talks to me about the issue we raised concerning our first northern trip and the woman who was in a wheelchair on the second floor of a building which I had understood was condemned by the fire marshal, but I may be wrong. Notwithstanding the fact that this woman has moved to another community and this individual case is no longer at stake, the interesting policy issue raised is in the top paragraph of her first letter. She says one of the problems of the investigation was that she had not received housing for two reasons. The second reason was a lack of suitable units for handicapped individuals and this was brought to the minister's attention. The other was a relatively low point rating in relation to other applicants on the waiting list.

This brings up the whole problem of the point-rating system. While income is a major factor, there is also the problem that certain types of people for certain types of reasons may find it next to impossible to get any kind of accommodation. An affliction or a handicap may be one of these reasons for there to be a different weighing of the point system. That may be something that

has to be looked at. If you are in a wheelchair a limited number of things are accessible to you; you have to be on the ground floor or in a building with an elevator. In parts of northern Ontario there are not many apartment buildings with elevators. That may give somebody in this kind of case a higher priority that the point-rating system will not automatically spit out.

The second thing I would like to talk about is the statement of David Greenspan in relation to his new policy that victims of violence who apply for permanent subsidized housing will be given special priority in Ontario. This deals with an issue that I have been raising for a number of years and that the Ombudsman has raised with the new chairman; namely, that a person who is living in Ontario Housing may need a safe unit and that person should be given that unit even if she is still living with the person who is beating her. I gather from this statement, and another statement I have read from Ms. Morrison, there has been a policy change.

16:30

The problem I have, however, is that there is another type of battering that should also be considered—psychological battering. It can be as abusive and as physically damaging as physical battering, even though there may be no bruises visible. It can be documented by doctors' reports, psychiatrists' reports and social workers' reports. I have referred a case to the Ombudsman asking that this be looked at; that psychological battering can be as damaging as the physical abuse which can take place and that maybe in setting the guidelines we have to look at that.

I would also like to refer to a letter I have sent to the Ombudsman from Ernestine's Women's Shelter, which is a marvellous group of people who provide a tremendous service in my riding, in which they have brought out some serious concerns about Ontario Housing.

I will read just a part of their letter, which I sent to Dr. Hill on September 15. It says:

"Another problem lies in the recent Metro Toronto Housing Authority practice of asking residents to provide medical documentation of injuries incurred from abusive mates as well as proof, such as a letter from a lawyer, that steps are being taken to leave the abusive relationship. We appreciate that MTHA is serving a large population of needy families and that there may be a real problem with fraudulent claims. However, requesting such references could constitute an invasion of privacy. Furthermore, it is not possible for many women to get such

documentation, as many abusers know how to make invisible injuries (especially internal or head injuries), or injuries that could be disguised as accidents. Many women we see are reluctant to go to a doctor for treatment due to shame and fear of reprisals from their mate.

"We feel that Ernestine's and other shelters for battered women can provide adequate referral for women requesting priority with MTHA. Leaving a home and relationship, although abusive, to go to a crowded shelter is a difficult decision for many women. In addition, we screen residents carefully in order to provide our services to women who need them the most. We feel confident in our ability to ascertain whether women and children are coming from abuse, and to protect our credibility, provide letters of support only for those women whom we feel have legitimate claims for becoming a priority with MTHA."

I suggest it is not just enough to say, as the Ontario Housing Corp. has said, "We are going to make some changes; we are going to give battered women a priority," if, at the same time, the documentation required is very difficult or degrading to produce. That may be something that has to be looked at.

If you have reputable social workers and agencies saying, "This is a battered person," they have obviously spent a lot of time with them, and surely their reputation is on the line, just as mine is if I write a letter in support. If I am not sure of the facts, then I think it is fairly clear from my letter. I do not put down something to which somebody could say, when I am making an appeal for the next person, "His last letter lacked credibility; therefore, can we trust this one?" It may be something to consider.

I would also like to deal with the recommendations you made on September 15 in a letter to the housing authority. It concerns file 44364, a Miss M. R. I would simply like to read the four recommendations and ask if you feel the new housing policy satisfies them.

The first recommendation was that Ontario Housing Corp. and Metro Toronto Housing Authority practices should be amended to permit acceptance of applications from applicants who are being abused by their spouses and continuing to live with the spouse. I gather the new policy solves that one.

Second, categories listed under OHC's critical housing requirements on the point rating system should be expanded to include situations in which applicants are being abused by the spouses.

Ms. Morrison: I can answer that question by saying I think the policy goes beyond that. We were dealing in those recommendations with one way of dealing with battered wives, which was to change the rating. I think OHC has gone beyond that and said they get absolute priority so you do not care about the point rating in that case.

Mr. Philip: You are saying the four points you recommended have not only been accepted but also they have gone beyond that with the new policy?

Ms. Morrison: I think they have.

Mr. Philip: The new policy is in such general terms that I wanted to make sure your understanding is the same as mine, that they were covered.

For Ontario Housing Corp., let me suggest to you while I am on the point system that there is another problem. I understand that economic conditions are a major factor. However, there are certain circumstances where a person can score very low in terms of the percentage of income that is being spent for housing and therefore be out of Ontario Housing for a long time, even though other conditions may be intolerable.

Let me give you an example. Under the new rules, which are an improvement, let us say a young couple move in with their family, live in Ontario Housing and pay a fairly low rent. The young people are unemployed. They may be in a very difficult psychological and physical environment, but they may not be paying much rent because their parents are not paying much and they are paying only a share of that. Therefore, the young couple do not score very high on that point system.

Another example is a woman in the North York part of my riding who lives in the basement of a house that has been condemned. The house is rented in three sections, which is probably against all the bylaws. It has been condemned. The owner says: "I am not going to repair it. I am simply going to plough it under." She lives in a place that is a fire hazard. She lives in a place where every time it rains she has to take the mattress off the bed and move it out into the other room because the water pours on to the bed and wets the mattress. They are absolutely deplorable conditions, but in terms of the point system she does not have many points because she pays only \$220 per month for this dingy, miserable basement.

It seems to me that there have to be some other ways of looking at exceptional cases. Where there is a situation of a woman and her three kids who have moved into a one-bedroom basement

or into a terrible condition such as this house in North York that has been condemned by everybody and will eventually be under the bulldozer, even though these people may not be paying a high percentage of their total monthly income in rent they are living in subhuman housing conditions by the kinds of standards we set in Toronto in 1986. Therefore, we have to have some way of weighing that. Maybe we have to look at the normal rent such families would pay and weigh or offset that against the fact that they are in terrible conditions, or something such as that. I do not know how to do it but I think you have to look at that.

Another thing I think has to be looked at is the waiting between the time a person makes an application and the time he gets a home visit. I think a person can accept that he is on a waiting list, that there are 18,000 families on it and that things are going to be tough. What he finds very hard to accept is that no one has come to see him and that his application is not in the file, so to speak. I hope it may be something you will want to look at.

16:40

I have another question concerning the problem of the requirement of legal custody of children. I gather that is being resolved at the moment, that one no longer has to prove that one has legal custody of a child in order to be housed. That is one of the things. If we keep on and if I am elected for another 11 years I will have nothing on my tick list. We are getting them off one at a time.

Another problem we still have is in a situation where a husband and wife were living together in Ontario Housing and they separate. It could be the wife, but without being chauvinistic we will assume the husband was a bum, spent all his money at the racetrack and then took off. She eventually went to live with her parents, with the kids.

She then makes a new application to Ontario Housing, and because this bum did not pay the rent she cannot get into Ontario Housing because her name was on the lease and she still owes \$800, \$1,000 or \$2,000. This is one of the things that has to be dealt with, and I gather it is one of the things you are trying to get them to look at. I wonder if we have any progress to report on that.

Ms. Morrison: Mr. Philip, as you know, in the one case that we had before our office the housing authority in question agreed that the wife who was left in that situation could pay half the arrears and then be rehoused. This is not an across-the-board policy, but my understanding

from the Ontario Housing Corp. is that it is encouraging housing authorities to make that kind of arrangement under those circumstances.

Mr. Philip: Half the amount may be fine if one happens to owe a few hundred dollars, but I have seen cases where it is \$2,400. It is as hard for a person on family benefits to come up with half of \$2,400, or \$1,200, as it is for me to come up with \$20,000 or something like that.

Ms. Morrison: I think you will agree that it is hard to make an across-the-board rule that is going to be fair in those circumstances. Even you might think it would not be fair to say that all arrears should always be written off entirely. It is a difficult question.

Mr. Philip: I think some system of gradual payback and letting them move in would be in the best interests of the children. I am by no means in any way justifying people who take off and owe rent to Ontario Housing Corp.

I still have problems with the whole policy of transfer. I recognize that we made some progress in allowing people to transfer from one type of geared-to-income housing to another under the same rules. That is progress because that was not allowed before. We congratulate the new chairman on making some progress there, but this four-criteria system seems to me to be blatantly unfair. I guess you have to say at some point that perhaps it is not a sin to be poor and that poor people may want to change their neighbourhoods the same way as people of more affluent means. To force them to prove that there is a physical need, that they are underhoused or overhoused or that they have changed their place of work is often a fairly difficult thing.

I wonder if there should not be some allowance to say that in those instances, perhaps with some nominal charge to cover administration, people should be allowed to transfer in the same way that if I do not like an apartment I rent in High Park I should be able, because of my income, to go and rent one in Scarborough—if I can find one, that is a problem.

Also, there is an inadequacy in terms of accepting, because of the stringency of the four criteria, that there may be psychological and cultural reasons that someone should legitimately have a transfer.

I recycle to you the case of Mr. and Mrs. T, who happen to come from an eastern European country. They live in my riding. They are adequately housed in a nice apartment, but Mrs. T does not speak English very well. She has been under some psychological pressures and some treatment. She is not used to the stores. She is not

used to dealing in supermarkets. Her doctor and dentist and the storekeepers who speak her language are all down in the High Park area. It seems quite unreasonable that simply because she does not have a physical health reason for transferring, etc., she should not somehow get some priority to live among those people whom she feels most comfortable with in Mr. Shymko's neighbourhood, where the shopkeepers and everybody can service her and where she can involve herself in the life of the churches, the community, etc., and where this elderly couple will feel more comfortable.

Over and over again we have been going back and forth on this problem, because of these ruddy four criteria that you have to prove all the time. We have all kinds of doctors' letters saying there are psychological health reasons for the transfer, and you then have to prove that this person will commit suicide or something really drastic to get the transfer. Nobody wants to put that on paper. She probably will not do anything that dramatic, but that does not mean the person is not suffering.

Mr. Shymko: I guess some people would threaten suicide to be able to live in my riding.

Mr. Philip: Some people living in your riding just might do it, I do not know.

Those are some of the concerns I have. I appreciate that we have set up a meeting to deal with the chairman. I look forward to that meeting between the Ombudsman, myself and the chairman. I am pleased the new chairman is showing some progress and some empathy, but I still think we have some distance to go.

As a last and parting thing, since I have been so nice to you all along, I should say I have some concern about the length of time it has taken to do this systemic study. If you search Hansard, it reveals that on September 24, 1984, we discussed OHC's implementation of the amendments to the OHC manual of practice, and we argued that there should be some work done by the Ombudsman at that point. On September 25, 1984, I made the proposal of Ombudsman's audits and expressed my concern.

On February 25, 1985, I commented on the Ombudsman's annual report and complimented Dr. Hill for accepting the recommendation of a systemic study into Ontario Housing, which he confided to me he was going to do. On September 3, 1985, Dr. Hill stated he would be looking at the report of the standing committee on administration of justice, which was a look at Ontario Housing practices.

On September 3, 1985, on page 36, OHC is listed as the immediate concern that you wanted

to research more deeply. On May 28, 1986, you stated you did not have the staff to look at other areas of OHC involved and were dealing only with the Moosonee-Timmins region. On May 28, 1985, you stated that after the Moosonee-Timmins report was completed, you would turn your attention to other OHC problems.

16:50

I gather we are making some progress now, but it seems to me it has taken a very long time. I wonder whether we would have been making even this much progress if there was not the dagger of my asking some nasty questions during the estimates which were coming up. I recognize that you have major staff constraints. I recognize that you are doing a good job in the areas you have studied, and I have been very complimentary. However, this study has been very long in coming. I welcome the fact that we are getting results, but I wish they had come earlier, as promised.

Dr. Hill: Let me respond to that briefly. I think I mentioned in a letter to you that it would be very difficult for us to do a major study of OHC; I doubted I had the resources to do it. Instead, I felt we should take as many issues as we can and deal with them one by one with Mr. Greenspan. I think we have done some of them already.

Rather than doing a research study that might take three years, since there is such an enormous bureaucracy to tackle, I felt the preferred approach, realizing our constraints, would be to grab the issues you have talked about and try to resolve them.

I am hoping that with the many instances which you have brought before us again, we can put them before Mr. Greenspan ahead of time, before the meeting on October 20.

Mr. Philip: That is why I presented them here.

Dr. Hill: I would like to get those to him before the October 20 meeting. Let us deal with those issues. I may be wrong, but, frankly, I think we will get more done issue by issue than waiting for the results of a study that might take a heck of a long time.

Mr. Hayes: On page 2 of your estimates submission you talk about how you severely restricted out-of-province travel and set limits on the cost of hotel accommodations that employees may use. I know your concern is to control costs and try to keep a handle on them, but can you give us an idea of what limits you are putting on the hotel costs for employees? Does this include all staff, from the top down?

Mrs. Meslin: The hotel limit is between \$50 and \$60 a night. It follows the general guidelines of the Manual of Administration, although an investigator may stay anywhere he can find a hotel, even one that is not listed in the full list, as long as it falls within our maximum. It is basically for our investigators, but if our assistant directors have to go out it is the same thing. It is for investigatory purposes.

Mr. Hayes: That covers all staff.

Mrs. Meslin: Except the Ombudsman.

Dr. Hill: Except the Ombudsman. When the Ombudsman has to meet the mayor or council, or do TV and radio interviews in a room, the room is larger. In many instances it does not cover me because of the nature of my duties, which the staff do not have.

Mr. Hayes: What happens, for example, if an investigator goes into a community and cannot find suitable accommodation right in the community? Is he forced to go to the outer limits?

Mrs. Meslin: All these things have reasonable limits.

Mr. Hayes: It is flexible.

Dr. Hill: Yes.

Mrs. Meslin: You cannot tell someone to travel 100 miles to get a room that is \$50 or \$60.

Mr. Hayes: The other thing is that you talk about the annual merit and performance increases. Can you explain what you mean by "annual merit and performance increases"? Which employees would receive them, and why would they receive them?

Mrs. Meslin: Generally, employees are awarded annual increases on the basis of their performance as long as they are performing within what we think are reasonable guidelines. They know what those guidelines are, because we have now instituted a performance appraisal process in which they participate and on which they are evaluated, much like the rest of the civil service. They are awarded merit increases; generally five per cent, although they can go up to a ceiling, I think, of eight per cent.

Dr. Hill: We follow the Manual of Administration.

Mrs. Meslin: Wait a minute. Mr. Mills is giving me some more information. Yes; until they reach the maximum in their classification.

Mr. Hayes: You are not talking about someone getting a bonus or anything at the end of the year.

Mrs. Meslin: No.

Mr. Hayes: You are talking about climbing the ladder and that type of thing.

Dr. Hill: Yes.

Mrs. Meslin: This is a process whereby people will get annual increases on their anniversary, assuming they have performed.

Mr. Hayes: Just one quick supplementary, and it is on Mr. Harris's question when he was asking about the North Bay office. Was there any change in the number of cases when they moved one level down to the ground level?

Mrs. Meslin: As a matter of fact, from the time they moved from the high-rise to the store front, there was a 79 per cent decrease. They dropped in cases.

Mr. Hayes: They dropped?

Mrs. Meslin: They dropped in jurisdictional cases, and they dropped in other than jurisdictional cases. Putting them into the store front did not do any good.

Dr. Hill: It did not do a thing.

Mr. Hayes: It did not do any good at all?

Mrs. Meslin: No. I have the figures; I hunted them up after Mr. Harris left. However, Thunder Bay increased when it went from a high-rise to a store front.

Mr. G. I. Miller: The time is getting on this afternoon, but I would like to respond to the Ombudsman. Back in 1975, when the Ombudsman was put in place, my view as a member was, and it still is, that all 125 members of the Legislature are ombudsmen on behalf of the people in their ridings. We should be working closely together, and the Ombudsman as the last resort is the one to deal with problems that the members cannot resolve.

I can sympathize with the member for Nipissing on not being informed of the closure of the North Bay office. I suppose we have to look at it from a financial point of view, as you have done, and I commend the office for taking fiscal responsibility. But I have listened to this over the past couple of days, and I wonder whether the Ombudsman is working closely with the members of the Legislature to come up with solutions to problems that need looking after.

Before you respond, Dr. Hill, I have another question. Under a new government I hope the ministers are listening closely; and I notice the member just made considerable comments on improving the system. Are they listening, and are they responding as quickly as you would like to see and making those changes? I noticed Ontario

Housing Corp. has made a recommendation that is going to be useful to all the people of Ontario.

I wonder what your response is in those two areas.

Dr. Hill: I get an average of three to five letters dealing with complaints from MPPs just about every week. I am also getting a number of letters every week and every month from members of Parliament, in which they ask me to perform this service or that service, in which they refer Workers' Compensation Board complaints to me, in which they refer complaints regarding perhaps the human rights commission or a number of different governmental agencies. I immediately write back to them. I insist that a letter be returned to a member, and to all people, within a week. That member should get a letter saying what we are going to do about the problem and inviting him or her to call us.

I would say there has been an increase in inquiries from members across Ontario in the past year. I get quite a few from Ed Philip. I think the relationship is a good one.

Mr. Philip: I now have a computer.

Dr. Hill: At some later date I could give you a ball-park figure on the number of letters and correspondence I have received from members asking for assistance or help. I consider it a good working relationship so far. I am pleased with it.

Mr. Knight: Supplementary to that, it is not part of your statistical evidence but you indicate, to make us feel good or to make us feel bad, that you get three to five letters a week from members. Do you receive any letters complaining about MPPs? If you do, you would not want to name them.

Dr. Hill: I have not yet received a letter complaining about an MPP or an MP. I keep a very careful look at letters from members.

Mr. Knight: That is nice.

Dr. Hill: Except in their capacity as ministers when we have a formal case, but generally speaking not in terms of a member.

Mr. G. I. Miller: I would like to respond to one of the comments of the member for Northumberland (Mr. Sheppard) about there being no Liberal member on the committee that went north. I am glad to see there were five members from the opposition and two from the third party. I was concerned about the lack of Liberal support, but there are 49 members trying to run a government. Cabinet ministers are making regular trips to the north, and it is hoped they are trying to keep an eye on those things.

The Ombudsman has again brought back a good report from those remote areas. I would have loved to have had the opportunity to visit those areas, but it was not possible this summer. I assume that is the reason there were no members from the Liberal Party at the Lakehead.

Dr. Hill: This is one time I do not have to answer the question.

Mr. G. I. Miller: I guess the thing about that closure decision which makes it more confusing for the member from North Bay, is the fact that we are looking for other outlets and we hope that area can be serviced properly and effectively. It may indicate the member is doing a good job as an ombudsman himself and that is the reason there have not been a lot of complaints coming into the office.

Mr. Philip: I want to say that on the trip to the north my colleague and I spoke for both the NDP and the Liberal Party and we did quite well. You were adequately represented, as the Conservative members of the committee will tell you, with one or two exceptions.

Mr. Bell: I do not have any questions on this part of the matter. There are a couple of other items I would like to raise before you adjourn. I will wait until the formal part of the estimates is completed.

Vote 3701 agreed to.

Mr. Chairman: This completes consideration of the estimates of the Office of the Ombudsman.

The committee considered other business at 5:02 p.m.

FEB 10 1986

SEPTEMBER 24, 1986

OM-29

CONTENTS

Wednesday, September 24, 1986

Office of the Ombudsman program:	OM-3
Adjournment:	OM-28

SPEAKERS IN THIS ISSUE

Harris, M. D. (Nipissing PC)
Hayes, P. (Essex North NDP)
Knight, D. S. (Halton-Burlington L)
McLean, A. K. (Simcoe East PC)
McNeil, R. K., Chairman (Elgin PC)
Miller, G. I. (Haldimand-Norfolk L)
Philip, E. T. (Etobicoke NDP)
Sheppard, H. N., Vice-Chairman (Northumberland PC)
Shymko, Y. R. (High Park-Swansea PC)
Smith, D. W. (Lambton L)

Witnesses:

From the Office of the Ombudsman:

Hill, Dr. D. G., Ombudsman of Ontario
Zacks, M., General Counsel
Meslin, E., Executive Director
Savage, H., Director of Regional Services
Mills, A., Controller
Morrison, G., Director of Investigations



FEB 10 1995



FEB 10 1993



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